

NILES CHARTER TOWNSHIP

ZONING ORDINANCE

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BERRIEN COUNTY, MICHIGAN

NILES CHARTER TOWNSHIP ZONING ORDINANCE

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CHAPTER 1

TITLE AND PURPOSE

SECTION 1.01

SHORT TITLE

This Ordinance shall be known as the "Niles Charter Township Zoning Ordinance."

SECTION 1.02

PURPOSE

The purpose of this Ordinance is to promote and safeguard the public health, safety, morals, prosperity and general welfare of the people. The provisions are intended to, among other things, encourage the use of lands, waters and other natural resources in the Township in accordance with their character and most suitable use; to limit the improper use of land and resources; to provide reasonable terms under which the lawful use of **nonconforming buildings**, structures, and land may be continued; to reduce hazards to life and property; to provide for orderly development within the Township; to avoid overcrowding of the population; to provide for adequate light, air and health conditions in dwellings and **buildings** hereafter erected or altered; to lessen congestion on the public roads and **streets**; to protect and conserve natural recreational areas, agricultural, residential, and other areas naturally suited to particular uses; to facilitate the establishment of an adequate and economic system of transportation, sewage disposal, safe water supply, education, recreation and other public requirements; and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties.

SECTION 1.03

THE EFFECT OF ZONING

- A. For the purpose of this Ordinance, except as hereafter specifically provided, no **lot**, land or premises shall be used, maintained or occupied, and no **building** or **structure** or part thereof shall be constructed, erected, moved, placed, maintained, reconstructed, used, extended, enlarged or altered, except in conformity with the regulations for the Zoning District in which it is located; these limitations being the minimum legislation necessary to promote and protect the general safety and welfare of the community.
- B. In case any land, **building**, **structure**, or part thereof is used, erected, altered or occupied contrary to Law or to the provisions of this Ordinance, such use of land, **building** or **structure** shall be unlawful and shall be declared a nuisance and such use of land may be required to cease and **buildings** or **structures** may be required to be vacated, torn down, or abated by any legal means and such land, **building**, or **structure** shall not be used or occupied until brought into conformance.
- C. If construction on a **building** or **structure** is lawfully begun prior to adoption of this Ordinance, nothing in this Ordinance shall be deemed to require any change in the planned or designed use of any such **building**, provided that actual construction is being diligently carried on, and further provided that such **building** shall be entirely completed for its planned or designed use within two (2) years from the effective date of this Ordinance.
- D. **Nonconforming buildings, uses, and lots** shall be governed by the provisions of Section 3.24 of this Ordinance.
- E. Any land use not specifically permitted by right or as a Special Land Use is prohibited.

CHAPTER 2

DEFINITIONS

SECTION 2.01

RULES APPLYING TO TEXT

- A. If the meaning of this Ordinance is unclear in a particular circumstance, then the body charged with interpreting or applying the Ordinance shall construe the provision to carry out the intent of the Ordinance, if such intent can be discerned from other provisions of the Ordinance or law.
- B. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- C. All words and phrases shall be construed and understood according to the common preferred usage of the language; but technical words and phrases and such as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.
- D. Words used in the present tense shall include the future; and words used in the singular number shall include the plural; and the plural the singular, unless the context clearly indicates the contrary.
- E. A "building" or "structure" includes any part thereof.
- F. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity. Gender related words, such as "he" and "him" include "she" and "her," or other similar uses of gender.
- G. Unless the context clearly indicates the contrary, the conjunctions noted below shall be interpreted as follows.
 - 1. "And" indicates that all connected items, conditions, provisions, or events shall apply.
 - 2. "Or," indicates that the connected items, conditions, provisions or events may apply singularly or in any combination.
 - 3. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.
- H. In computing the number of days, the first day is excluded and the last day is included. If the last day of any period during which an application, filing, or request is required to be made to the Township or other governmental agency is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday observed by the Township.
- I. Defined terms used in this Ordinance are highlighted in bold typeface, except for the terms in this Chapter.

SECTION 2.02
DEFINITIONS - A**ABOVEGROUND STORAGE TANK SYSTEM**

A tank or combination of tanks, including the pipes that are connected to the tank or tanks or ancillary equipment containment systems, if any, which is, was, or may have been used to contain an accumulation of liquids and which has less than 10% of its volume, including the volume of the underground pipes that are connected to the tank or tanks, beneath the surface of the ground, as defined in Storage and Handling of Flammable and Combustible Liquids Rules, June 30, 1992.

ACCESSORY BUILDING

A building or portion of a building supplementary and subordinate to a main building on the same **lot** occupied by or devoted exclusively to an accessory use. A maximum of two (2) accessory buildings are permitted on a parcel.

ACCESSORY USE

A use naturally and normally incidental and subordinate to, and devoted exclusively to the main use of the land or building.

AGRICULTURE

The use of land for tilling the soil, raising tree or field crops, or animal husbandry as a source of income.

ALTERATIONS

Any change, addition or modification in construction or type of use of occupancy; any change in the supporting structural members of a building, such as walls, partitions, columns, beams, girders, or any change which may be referred to herein as “altered” or “reconstructed.”

ANIMALS, SMALL DOMESTIC

Any dog, cat, household bird, fish, or other small animal, not including livestock, which is trained or bred to live in or about the habitations of humans.

ARCHITECTURAL FEATURES

Architectural features of a building shall include cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys and decorative ornaments, such as recesses, projections, wall insets, arcades, window display areas, awnings, balconies, window projections, landscape structures or other features that complement the design intent of the structure.

AVERAGE GRADE

The average finished ground elevation at the center of all walls of a building established for the purpose of regulating the number of stories and the height of buildings. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building or structure being measured.

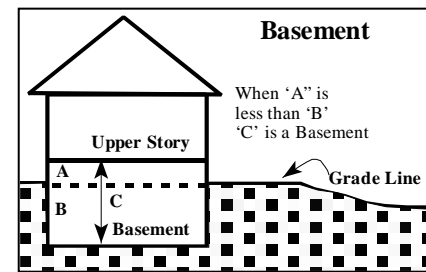
SECTION 2.03 DEFINITIONS - B

BASEMENT OR CELLAR

A portion of a building having more than one-half ($\frac{1}{2}$) of its height below grade.

BED AND BREAKFAST ESTABLISHMENT

A use within a detached single family dwelling in which transient guests are provided a sleeping room, breakfast and access to bathing and lavatory facilities in return for payment.



BOARD, TOWNSHIP

As used in this Ordinance, this term means the Niles Charter Township Board of Trustees.

BUILDABLE AREA

The space remaining within a lot after the minimum setback and open space requirements of this Ordinance have been met.

BUILDING

An independent structure, temporary or permanent, having a roof supported by columns, walls, or any other support used for the enclosure of persons, animals, or chattels, or carrying on business activities or other uses. When any building portion is completely separated from every other part by division of walls from the ground up, and without openings, each portion of such building shall be deemed a separate building.

BUILDING ENVELOPE (*amended July 6, 2010*)

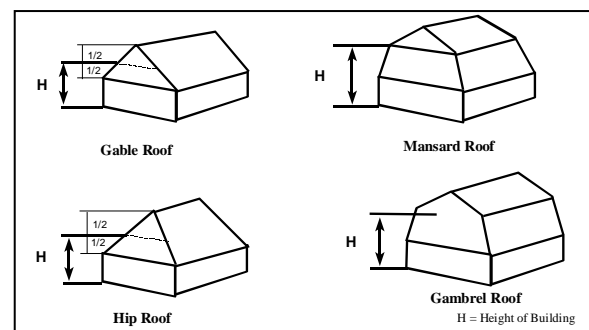
That portion of a Lot within which the Principal Building, Accessory Buildings, and driveways are to be constructed, outside of all Yards and setbacks required by this Ordinance or as approved as part of the Density Bonus Option approval.

BUILDING HEIGHT

The building height is the vertical distance measured from the established grade to the highest point of the roof surface if a flat roof; to the deck of mansard roofs; and to the mean height level between eaves and ridge of gable, hip and gambrel roofs. When the terrain is sloping, the ground level is measured at the foundation.

BUILDING, MAIN

A building in which the principal use of the lot on which it is situated is conducted.



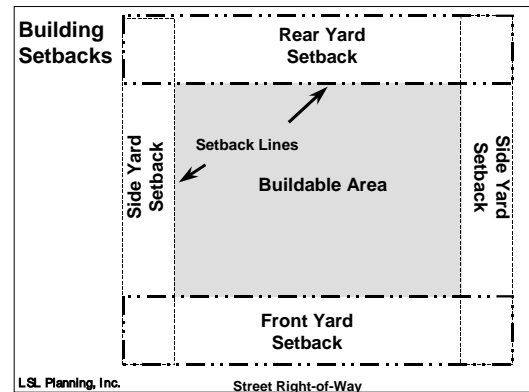
BUILDING PERMIT

A written authority as issued by the Building Official on behalf of the Township permitting the construction, moving, alteration or use of a building in conformity with the provisions of this Ordinance and the applicable Building Code.

BUILDING SETBACK LINES

Lines marking the required setback distance from the lot lines which establish the minimum permitted front, side, or rear yards.

- A. *Front Building Setback Line.* The line marking the required setback distance from the front lot line or street easement line, as applicable, which establishes the minimum front yard setback area.
- B. *Rear Building Setback Line.* The line marking the required setback distance from the rear lot line which establishes the minimum rear yard setback area.
- C. *Side Building Setback Lines.* Lines marking the required setback distance from the side lot lines which establish the minimum side yard setback area.



SECTION 2.04 DEFINITIONS - C

CHILD CARE FACILITY

A governmental or nongovernmental facility having as its principal function the receiving of minor children for care, maintenance, training and supervision, notwithstanding that educational instruction may be given. This definition shall include: child caring institutions, child placing agencies, children's camps, child care centers, day care facilities, foster family homes, foster family group homes, family day care homes, group day care homes, nursery schools, and parent cooperative preschools, as those terms are defined by Public Act 116 of 1973, as amended, and which are licensed and regulated by the State under that Act.

CLEARANCE ZONE (*amended July 6, 2010*)

Those portions of a Building Envelope which are required to be excavated or cleared of existing vegetation and/or topsoil for the purposes of construction of Principal Buildings, Accessory Buildings, utility lines, driveways, sidewalks, and other similar necessary Structures or facilities.

CLINIC

A building or group of buildings where human patients are admitted for examination and treatment by more than one (1) professional, such as a physician, dentist, or the like, except that human patients are not lodged therein overnight

COMMERCIAL

The use of property for the purchase, sale, barter, display, or exchange of goods, wares, merchandise or personal services or the maintenance of service offices, recreation, amusement enterprise, or garage/yard sales operating more than twelve (12) days during any one (1) twelve (12) month period.

COMMERCIAL WIRELESS TELECOMMUNICATION SERVICES

Licensed telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

COMMISSION, PLANNING

As used in this Ordinance, this term means the Niles Charter Township Planning Commission.

CONDOMINIUM ACT

Public Act 59 of the Michigan Public Acts of 1978, as amended.

CONDOMINIUM UNIT

That portion of the condominium project designed and intended for separate ownership and use, as described in the Master Deed of the condominium project.

CONDOMINIUM PROJECT

A plan or project consisting of not less than two condominium units established in conformance with the Condominium Act.

SECTION 2.05
DEFINITIONS - D**DAY CARE FACILITY**

- A. *Family Day Care Facility* - A single family residence, occupied as such, in which care is provided for more than one (1) but less than (7) minor children or adults for periods of less than twenty-four (24) hours per day, unattended by a parent or legal guardian. Care for persons related by blood, marriage or adoption to a member of the family occupying the dwelling is excluded from this definition.
- B. *Group Day Care Facility* - A single family residence, occupied as such, in which care is provided for at least seven (7) but not more than twelve (12) minor children or adults for periods of less than twenty-four (24) hours per day, unattended by a parent or legal guardian. Care for persons related by blood, marriage, or adoption to a member of the family occupying the dwelling is excluded from this definition.
- C. *Commercial Day Care Facility* - A facility, other than a private residence, receiving minor children or adults for care for periods of less than 24 hours in a day, for more than two (2) weeks in any calendar year. Child care and supervision provided as an accessory use, while parents are engaged or involved in the principal use of the property, such as a nursery operated during church services or public meetings, or by a fitness center or similar operation, shall not be considered Commercial Day Care.

DISTRICT, ZONING

A portion of the Township within which certain uses of land or buildings are permitted and within which certain regulations and requirements apply under the provisions of this Ordinance.

DRIVE-THROUGH ESTABLISHMENT

A commercial establishment whose retail/service character is significantly dependent on providing a driveway approach and service windows or facilities for vehicles in order to serve patrons while in or momentarily stepped away from the vehicle. Examples include banks, cleaners, and restaurants, but not including automobile service stations.

DRIVEWAY, PRIVATE

An improved or unimproved path or road extending from a public right-of-way or private road easement to a single **building**, dwelling, or **structure**, intended to provide ingress and egress primarily for occupants thereof.

DWELLING, OR DWELLING UNIT

A dwelling unit is any building or portion thereof having cooking and housekeeping facilities, which is occupied wholly as the home, residence or sleeping place of one (1) family, either permanently or transiently, but in no case shall a motor home, trailer coach, garage, automobile chassis, tent, or portable building be considered a dwelling. In case of mixed occupancy, where a building is occupied in part as a dwelling unit, the part so occupied shall be deemed a dwelling unit and shall comply with the applicable provisions of this Ordinance.

DWELLING, MULTIPLE FAMILY

A building or portion thereof, used or designed for use as a residence for three (3) or more families living independently of each other and each doing their own cooking and housekeeping.

DWELLING, TWO-FAMILY

A detached building used or designed for use exclusively by two (2) families living independently of each other and each doing their own cooking and housekeeping. It may also be termed a duplex.

DWELLING, SINGLE FAMILY (DETACHED)

A detached building used or designed for use exclusively by one (1) family.

SECTION 2.06
DEFINITIONS - E**ERECTED**

The word "erected" includes built, constructed, reconstructed, moved upon, or any physical operations on the premises required for the building. Excavations, fill, drainage, and the like, shall be considered a part of the term "erect" or "erected."

ESSENTIAL SERVICES

- A. The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of underground, surface, or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, traffic signals, hydrants, towers, poles, and other similar equipment, and accessories in connection therewith reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or for the public health or general welfare.
- B. Essential services does not include buildings other than such buildings that are primarily enclosures or shelters of the above essential service equipment
- C. Cellular telephone or commercial wireless communications towers shall not be considered essential services.

EXCAVATING

Excavating shall be the removal of soil below the average grade of the surrounding land or street grade, whichever shall be highest, excepting common household gardening.

SECTION 2.07 DEFINITIONS - F

FAMILY

- A. An individual or group of two (2) or more persons related by blood, marriage, or adoption, together with foster children and servants of the principal occupants who are domiciled together as a single housekeeping unit in a dwelling unit; or
- B. A collective number of individuals domiciled together in one (1) dwelling unit whose relationship is of a continuing, nontransient domestic character and who are cooking and living as a single nonprofit housekeeping unit.
- C. This definition shall not include any society, club, fraternity, sorority, association, half-way house, lodge, coterie, organization, group of students, or other individual whose domestic relationship is of a transitory or seasonal nature, is for an anticipated limited duration of a school term or during a period of rehabilitation or treatment, or is otherwise not intended to be of a permanent nature.

FARM

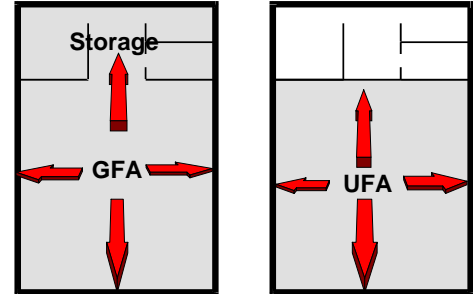
The use of five (5) acres or more of land for cultivation, or raising of livestock for commercial purposes, including greenhouses and nurseries (except as may otherwise be regulated by this Ordinance), orchards, or lumbering, but not including stone quarries, or gravel, dirt, or sand removal operations.

FENCE

Any permanent fence, partition, wall, structure or gate erected as a dividing structure, barrier or enclosure, and not part of a structure requiring a building permit.

FLOOR AREA, GROSS (GFA)

- A. The sum of the gross horizontal area of the several floors of the building measured from the exterior faces of the exterior walls or from the center line of walls separating two (2) buildings. The gross floor area of a building shall include the basement floor area only if more than one-half (1/2) of the basement height is above finish **lot** grade. (See Basement.)
- B. Gross floor area shall not include attic space having headroom of seven and one-half (7-1/2) feet or less, or interior balconies or mezzanines. Any space devoted to off-street parking or loading shall not be included in floor area. Areas of basements (except as provided above), breezeways, porches, or attached garages are not included.

**Gross Floor Area****Usable Floor Area****FLOOR AREA, USABLE (UFA)**

- A. That area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons, clients, or customers; or area used in a dwelling unit for living purposes. Floor area which is used or intended to be used principally for the storage or processing of merchandise, for hallways, or for utilities shall be excluded from the computation of usable floor area.
- B. Measurement of usable floor area shall be the sum of the horizontal areas of the several floors of the building measured from the interior faces of the exterior walls.

FRONTAGE

The horizontal distance between the side lot lines measured at the street right-of-way or easement line.

SECTION 2.08

DEFINITIONS - G

GARAGE

A building used primarily for the storage of self-propelled vehicles for the use of the occupants of a home on a lot on which such building is located. The foregoing definition shall be construed to permit the storage on any one (1) lot, for the occupants thereof, of commercial vehicles not exceeding a rated capacity of one (1) ton

SECTION 2.09

DEFINITIONS - H

HAZARDOUS SUBSTANCE

A chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment. The term "hazardous substance" includes, but is not limited to, any of the following:

- A. Hazardous Substances as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96.510, 94 State. 2767.

- B. Hazardous Waste as defined in Part 111 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 - C. Regulated Substance as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 - D. Hazardous Substance as defined in Part 201 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
 - E. Used oil.
 - F. Animal waste or byproducts, or carcasses.
- HOME OCCUPATION

An occupation customarily conducted in a dwelling unit that is clearly an incidental and secondary use of the dwelling. Without limiting the foregoing, a single family residence used by an occupant of that residence to give instruction in a craft or fine art within the residence shall be considered a home occupation.

HOSPITAL

An institution providing health services, primarily for in-patients and medical or surgical care including related facilities such as laboratories, out-patient departments, training facilities, central service facilities and staff offices.

HOTEL

A building occupied or used as a predominantly temporary abiding place by individuals or groups of individuals, with or without meals.

SECTION 2.10 DEFINITIONS - I

INOPERATIVE VEHICLES

Any motor vehicle currently not capable of being started and moved under its own power, as further defined in Ordinance # 56, the Niles Charter Township Blight Control Ordinance, as a “junk motor vehicle.”

INTENSIVE LIVESTOCK OPERATIONS

- A. A total of seven hundred and fifty (750) dairy cattle (all classes); seven hundred and fifty (750) slaughter or feeder cattle, one thousand eight hundred (1,800) swine (all classes), one hundred thousand (100,000) poultry (all classes); five thousand (5,000) sheep or goats (all classes); or two hundred (200) horses (all classes); or
- B. A population per acre of at least nine (9) dairy cattle, nine (9) slaughter or feeder cattle, twenty (20) swine, one thousand two hundred fifty (1,250) poultry, sixty (60) sheep or goats, or four (4) horses.

SECTION 2.11 DEFINITIONS - J

JUNK

Any motor vehicle, machinery, appliance, product, or merchandise with parts missing; scrap metal or material that is damaged or deteriorated; vehicles or machines in a condition which precludes their use for the purpose for which they were manufactured.

JUNK YARD

The term "junk yard" includes automobile wrecking yards and salvage areas and includes any area of more than two hundred (200) square feet for the storage, sale, processing, keeping or abandonment of junk, including scrap metals, other scrap materials or reclaimed materials, or for the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof for profit, but does not include uses established entirely within enclosed buildings.

SECTION 2.12 DEFINITIONS - K

KENNEL

Any lot or premises on which four (4) or more small domestic animals, six (6) months of age or older are kept temporarily or permanently for the purpose of breeding, boarding or sale.

SECTION 2.13 DEFINITIONS - L

LIVESTOCK

Animals limited to swine, cattle, sheep, poultry, horses, ponies, and goats.

LOADING SPACE

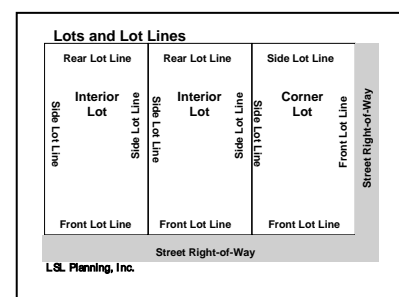
An off-street space on the same lot with a building or group of buildings, for temporary parking for a commercial vehicle while loading or unloading merchandise or materials. Off-street loading space is not to be included as off-street parking space in computation of required off-street parking.

LOT

A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance, including one (1) main building with its accessory buildings, and providing the open spaces, parking spaces, and loading spaces required by this Ordinance. The word "lot" shall include plot or parcel. A lot need not be a "lot of record." A lot may also mean a portion of a condominium project, as regulated by Public Act 59 of 1978, as amended, designed and intended for separate or limited ownership or use.

LOT AREA

The total horizontal area within the lot lines of a lot, excluding street right-of-way.



LOT, CORNER

A lot located at the intersection of two (2) streets or a lot bounded on two (2) sides by a curving street, any two (2) chords of which form an angle of one hundred thirty-five (135) degrees or less.

LOT COVERAGE

The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures, but not including parking lots.

LOT, DEPTH

The mean horizontal distance from the front lot line to the rear lot line, or the two (2) front lines of a double frontage lot.

LOT, DOUBLE FRONTAGE (THROUGH)

A lot other than a corner lot having frontage on two (2) more or less parallel streets.

LOT, INTERIOR

A lot other than a corner lot with only one (1) lot line fronting on a street.

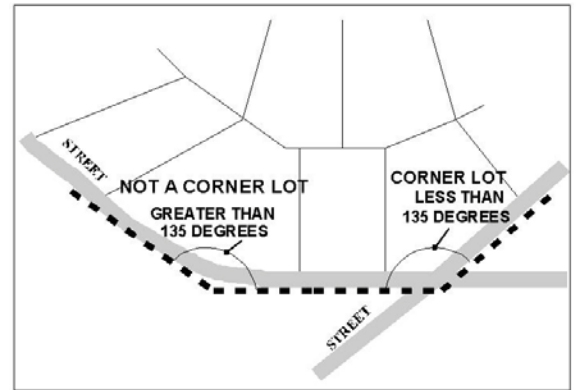
LOT LINES

The property lines or other described lines bounding the lot.

- A. *Front Lot Line.* In the case of an interior lot, abutting upon one (1) public or private street, the front lot line shall mean the line separating such lot from such street right-of-way or easement.
- B. *Rear Lot Line.* Ordinarily, that lot line which is opposite and most distant from the front lot line of the lot.
 - 1. In the case of an irregular or triangular-shaped lot, a line at least ten (10) feet in length entirely within the lot, parallel to, and at the maximum distance from the front lot line of the lot shall be considered to be the rear lot line for the purpose of determining depth of rear yard.
 - 2. In cases where none of these definitions are applicable, the Zoning Administrator shall designate the rear lot line.
- C. *Side Lot Line.* Any lot line not a front lot line or a rear lot line. A side lot line separating a lot from another lot, or lots is an interior side lot line.
- D. *Street Lot Line.* A lot line or easement line separating the lot from the right-of-way of a street or an alley.

LOT OF RECORD

A lot which exists in a subdivision plat as shown on the records of the County Register of Deeds, or a lot or parcel described by metes and bounds, which has been so recorded as required by law.

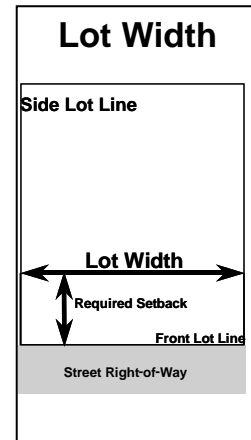


LOT, WATERFRONT

A lot having frontage directly upon a lake, river or otherwise formed impoundments of water.

LOT WIDTH

The horizontal distance between the side lot lines, as measured at the front yard setback line.

**SECTION 2.14
DEFINITIONS - M****MANUFACTURED HOME**

A residential building, dwelling unit, dwelling room or rooms, or a building component which is designed for long-term occupancy as a dwelling unit or portion of a dwelling unit, and is wholly or substantially constructed at an off-site location, transported to a site and erected. The term includes the terms “mobile home” or “modular home.”

MANUFACTURED HOME PARK

A parcel or tract of land under the control of a person upon which two (2) or more manufactured homes are located on a continual, nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a manufactured home.

MANUFACTURED HOME SPACE

A plot of ground within a manufactured home park designed for the placement of one (1) manufactured home.

MASTER DEED

The legal condominium document recording the condominium project to which is attached as exhibits and incorporated by reference the approved bylaws for the project and the approved condominium plan for the project.

MASTER PLAN

The Master Plan currently adopted by Niles Charter Township, including graphic and written materials, indicating the general location for streets, parks, schools, public buildings, and all physical development of the Township, and includes any unit or part of such plan and any amendment to such plan.

MOTEL

A series of attached, semi-attached, or detached buildings providing overnight lodging and open to the traveling public for compensation.

MOTOR HOME

A motorized vehicular unit primarily designed for temporary dwelling in connection with travel and recreational usage. This term does not include manufactured homes.

SECTION 2.15
DEFINITIONS - N**NON-CONFORMING BUILDING OR STRUCTURE**

A building, structure or portion thereof lawfully existing at the effective date of this Ordinance, or amendments thereto, and which does not conform to the provisions of the Ordinance in the Zoning District in which it is located.

NON-CONFORMING LOT

A lot that conformed with all Township zoning requirements at the time of its creation which no longer conforms to the requirements for lot area or lot width, and which has not been subdivided or reduced in size.

NON-CONFORMING USE

A use which lawfully occupied a building or land at the effective date of this Ordinance or amendments thereof, and that does not conform to the use regulations of the Zoning District in which it is located.

NONRESIDENTIAL DISTRICT

The Office/Service (OS), Local Business (LB), General Business (GB), Highway Business (HB), and Industrial (I) Zoning Districts.

NURSING HOME

A home for the care of the aged or infirm, or a place of rest for those suffering bodily disorders, wherein persons are provided care for compensation. Said home shall conform to, and be licensed under applicable State law.

SECTION 2.16
DEFINITIONS - O**OPEN AIR BUSINESS**

Uses operated substantially in the open air, including, but not limited to:

- A. Bicycle, utility truck or trailer, motor vehicle, boats, or home equipment sale, repair, rental, or storage services.
- B. Outdoor display and sale of garages, motor homes, manufactured homes, snowmobiles, farm implements, swimming pools, and similar activities.
- C. Retail sale of trees, fruits, vegetables, shrubbery, plants, seeds, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment, and other home garden supplies and equipment.
- D. Tennis courts, archery courts, shuffleboard, horseshoe courts, rifle ranges, miniature golf, golf driving ranges, children's amusement park or similar recreation uses (transient or permanent).

OPEN SPACE

Land used for recreation, resource protection, amenity, and/or buffers. In no event shall any area of a lot constituting the minimum required lot area or setback, nor any part of an existing or future road or right-of-way be considered open space.

ORDINARY HIGH WATER MARK

The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. Where the water levels vary for purposes of water level management, the ordinary high water mark shall be the higher of the levels generally present.

**SECTION 2.17
DEFINITIONS - P****PARKING LOT**

A facility providing vehicular parking spaces, along with adequate drives, aisles, and maneuvering space to allow unrestricted ingress and egress to at least two (2) vehicles.

PARKING SPACE

A space of at least two hundred (200) square feet exclusive, of necessary driveways, aisles, or maneuvering areas, suitable to accommodate one (1) motor vehicle and having direct unobstructed access to a street or alley.

PLANNED UNIT DEVELOPMENT (PUD)

A development of land planned and developed as a whole in a single project or series of phases. The PUD may include streets, utilities, buildings, open spaces, and other site features and improvements.

PORCH, ENCLOSED

A covered entrance to a building or structure which is totally enclosed, and projects out from the main wall of said building or structure and has a separate roof or an integral roof with the main building or structure to which it is attached.

PORCH, OPEN

A covered entrance to a building or structure which is unenclosed except for columns supporting the porch roof, and projects out from the main wall of said building or structure and has a separate roof or an integral roof with the main building or structure to which it is attached. A recessed porch is considered an open porch.

PUBLIC UTILITY

Any person, firm, corporation, municipal department, board, or commission duly authorized to furnish, under Federal, State or municipal regulations, to the public, electricity, gas, steam, communications (except cellular telephone or commercial wireless communications towers), telegraph, transportation, or water services.

**SECTION 2.18
DEFINITIONS - R****RECREATION VEHICLE OR EQUIPMENT**

A vehicle or equipment intended for temporary or periodic use for recreational or leisure pursuits. Such vehicles shall include boats, airplanes, special purpose automobiles, floats, rafts, trailers, snowmobiles, camping or travel trailers, motorized homes, detachable travel equipment of the type adaptable to light

trucks, and other equipment or vehicles of a similar nature.

REPLACEMENT COST

Cost of replacing a structure or building at current costs at the time of the loss, identical to the one that was destroyed, without application of depreciation. This may also be defined as twice the current State Equalized Value.

RESIDENTIAL DISTRICT

The Agricultural Preservation (AP), Rural Preservation (RP), Low Density (R-1A), Medium Density (R-1B), High Density (R-2), and Manufactured Housing Community (R-3) Zoning Districts.

ROADSIDE STAND

A farm building or separate structure used for the display or sale of agricultural products grown on the premises upon which the stand is located.

SECTION 2.19 DEFINITIONS - S

SALVAGE YARD

A space where waste, surplus, discarded, or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled, or handled, including house wrecking, structural steel materials, equipment and auto wrecking.

SATELLITE DISH ANTENNA, OR DISH ANTENNA

An apparatus capable of receiving communications from a transmitter or a transmitter relay located in planetary orbit.

SENSITIVE LANDS (*amended July 6, 2010*)

Lands classified for purposes of density calculation that contain a minimum contiguous area of two (2) acres and which contain significant natural features.

SETBACK; SETBACK AREA

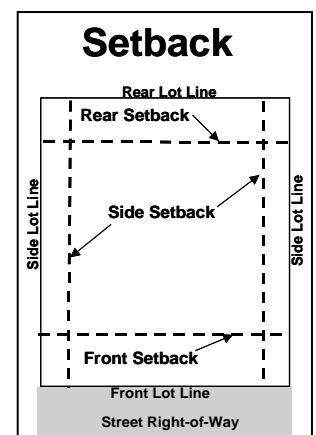
The minimum required horizontal distance measured from the front, side, or rear lot line, as the case may be, which describes an area termed the required setback area on a lot or parcel.

SEXUALLY ORIENTED BUSINESS

As defined by Ordinance #59 of Niles Charter Township.

SIGNIFICANT NATURAL FEATURE (*amended July 6, 2010*)

Any area which exhibits unique topographical, ecological, or hydrological characteristics such as wetlands, flood plains, water features, woods, slopes in excess of fifteen (15%) percent, active agricultural lands, or other unique natural features, as determined by the Township Board, Planning Commission, Michigan Department of Natural Resources and Environmental (MDNRE), or other appropriate agency.



STABLES, PRIVATE

A building or structure, located on a lot of five (5) acres or more on which a dwelling is located; designed, arranged, used, or intended to be used for housing saddle horses or ponies primarily for the use of occupants of the dwelling and not for hire.

STABLES, RIDING

A building or structure which is designed, arranged, used, or intended to be used for housing saddle horses or ponies primarily for hire.

STATE LICENSED RESIDENTIAL FACILITY

A residential care facility licensed by the State of Michigan under Act 287 of 1972 of the Public Acts of Michigan, as amended, or Act 116 of 1973 of the Public Acts of Michigan, as amended, which provides resident care services under twenty four (24) hour supervision or care, but does not include facilities licensed by the State of Michigan for care and treatment of persons released from or assigned to correctional institutions.

- A. A State Licensed Residential *Family* Facility includes a state licensed residential facility providing resident services to six (6) or fewer persons.
- B. A State Licensed Residential *Group* Facility includes a state licensed residential facility providing resident services to more than six (6) persons.

ADULT FOSTER CARE FACILITY

A facility defined by the Adult Foster Care Facility licensing act (PA 218 of 1979), as amended, having as its principal function the receiving of adults for foster care. Such facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically handicapped who require supervision on an ongoing basis, but who do not require continuous nursing care.

ADULT FOSTER CARE FAMILY HOME

A private residence in which the licensee is a member of the household and an occupant, providing foster care for five (5) or more days a week and for two (2) or more consecutive weeks with the approved capacity to receive six (6) or fewer adults.

ADULT FOSTER CARE LARGE GROUP HOME

An adult foster care facility with the approved capacity to receive at least thirteen (13) but not more than twenty (20) adults to be provided with foster care.

ADULT FOSTER CARE SMALL GROUP HOME

An adult foster care facility with the approved capacity to receive twelve (12) or fewer adults to be provided with foster care.

FOSTER FAMILY GROUP HOME

A private residence in which more than four (4) but fewer than seven (7) minor children, who are not related to an adult member of the household by blood, marriage, or adoption, are provided care for twenty-four (24) hours a day, for four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

FOSTER FAMILY HOME

A private residence in which one (1) but not more than four (4) minor children, who are not related to an adult member of the household by blood, marriage, or adoption, are provided care for twenty-four (24) hours a day, for four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

STORY

That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. For the purpose of this Ordinance, a basement or cellar shall be counted as a story only if over fifty percent (50%) of its height is above the level from which the height of the building is measured, or, if it is used for business purposes.

STORY, HALF

That part of a building between a pitched roof and the uppermost full story, said part having a floor area which does not exceed one-half ($\frac{1}{2}$) the floor area of said full story, provided the area contains at least two hundred (200) square feet and which contains a clear height of at least seven and one-half ($7\frac{1}{2}$) feet, at its highest point.

STREET, PRIVATE

A privately owned and maintained thoroughfare meeting the requirements of Section 3.26 of this Ordinance.

STREET, PUBLIC

A public thoroughfare including any rights-of-way and traveled surfaces which afford traffic circulation and principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road, and other thoroughfare; except an alley.

STRUCTURE

Anything constructed or erected, the use of which requires location on the ground or attachment to something on the ground.

SUBSTANTIAL IMPROVEMENT

- A. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the replacement cost of the structure before improvement or repair is started. If the structure has been damaged and is being restored, the value shall be that which existed before the damage occurred.
- B. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- C. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely

necessary to assure safe living condition, or any alteration of a structure listed on the National Register of Historic Places or the Michigan Register of Historic Places.

SECTION 2.20

DEFINITIONS - T

TEMPORARY BUILDING OR USE

A structure or use permitted by the Zoning Administrator to exist during periods of construction of the main building or for special events as permitted by this Ordinance.

TRAVEL TRAILER

A vehicular, portable unit built on a chassis designed to be used as a temporary dwelling for travel and recreational purposes, generally not exceeding eight (8) feet in width or thirty-five (35) feet in length. It includes folding campers and truck mounted campers.

SECTION 2.21

DEFINITIONS - U

UNCONSTRAINED LANDS (*amended July 6, 2010*)

Lands classified for purposes of density calculation which are not classified as Sensitive Lands.

UNDERGROUND STORAGE TANK SYSTEM

A tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of hazardous substances, as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.

UNDEVELOPABLE LANDS (*amended July 6, 2010*)

Lands located within wetlands regulated by the Michigan Department of Natural Resources and Environment, submerged lands beneath any permanent surface water lake or stream, lands within a 100-year floodplain as established by the Federal Emergency Management Agency, lands with slopes in excess of 25%, lands encumbered by any other permanent restrictions that prevent development, such as utility, drainage or access easements.

USE, PRINCIPAL

The primary purpose for which land or premises, or a building thereon, is designed, arranged, or intended, for which it is occupied, or maintained, let, or leased.

USEABLE OPEN SPACE (*amended July 6, 2010*)

Lands within a development designed and intended for uses that do not require significant built improvements; such as walking, cross-country skiing, biking, nature study, bird watching, picnicking, community gardening, hunting, fishing or the playing of golf or disk golf. Useable open space is distinct from areas devoted to conservation or sensitive lands without built improvements which would normally not be accessible for use by humans and from areas devoted to active pursuits on open space, such as ball fields or recreational vehicle courses.

USED OIL

Any oil which had been refined from crude oil, used, and as a result of such use contaminated by physical or chemical impurities.

SECTION 2.22 DEFINITIONS - V

VEHICLE REPAIR

Any major activity involving the general repair, rebuilding or reconditioning of motor vehicles, engines, or trailers; collision services, such as body, frame, or fender straightening and repair; overall painting and vehicle rust-proofing; refinishing or steam cleaning.

VEHICLE SERVICE STATION

A building and lot or parcel designed or used for the retail sale of fuel, lubricants, air, water or other operating commodities for motor vehicles (including trucks, aircraft and boats) and including the customary space and facilities for the installation of such commodities on or in such vehicles and including space for storage, hand washing, minor repair, and servicing, but not including vehicle repair as defined in this Chapter.

VEHICLE WASH ESTABLISHMENT

A building, or portion thereof, the primary purpose of which is that of washing motor vehicles.

SECTION 2.23 DEFINITIONS - W

WELL

A permanent or temporary opening in the surface of the earth for the purpose of removing fresh water, testing water quality, measuring water characteristics, liquid recharge, waste disposal, or dewatering purposes during construction, as defined in the Michigan Water Well Construction and Pump Installation Code, Part 127, Act 368 of the Public Acts of 1978, as amended, and rules.

WELLHEAD PROTECTION AREA (WHPA)

The wellhead protection area map approved by the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division.

SECTION 2.24 DEFINITIONS - Y

YARD

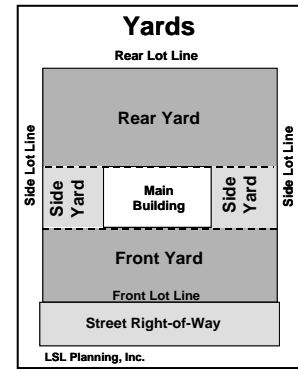
A yard is an open space on the same land with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

- A. A *Front Yard* is an area extending the full width of the lot, the uniform depth of which is measured at right angles to the front lot line.

- B. A *Rear Yard* is an area extending across the full width of the lot, the uniform depth of which is measured at right angles to the rear lot line.
- C. A *Side Yard* is an area between a main building and the side lot lines, extending from the front yard area to the rear yard area. The width of the side yard shall be measured horizontally from and at right angles to the nearest point of the side lot line.

YARD, REQUIRED

The required yard shall be that set forth in the applicable chapters of the Niles Charter Township Zoning Ordinance as the minimum yard requirement for each zoning district.



SECTION 2.25 DEFINITIONS - Z

ZONING ACT

The Michigan Zoning Enabling Act; Act 110 of 2006 of the Public Acts of Michigan, as amended.

ZONING ADMINISTRATOR

The person designated by the Township Board to administer the provisions of this Zoning Ordinance.

ZONING BOARD OF APPEALS, OR BOARD OF APPEALS

The Zoning Board of Appeals of Niles Charter Township.

CHAPTER 3

GENERAL PROVISIONS

SECTION 3.01

REQUIRED AREA, SPACE, AND USE CONDITIONS AND EXCEPTIONS

- A. No **lot** or **lots** in common ownership and no **yard**, parking area or other space shall be so divided, altered or reduced as to make that area or dimension less than the minimum required under this Ordinance. If already less than the minimum required under this Ordinance, said area or dimension shall not be further divided or reduced.
- B. Existing **lots** of record.
 - 1. A **lot** which is platted, or otherwise lawfully of record as of the effective date of this Ordinance, may be used as specified in the District in which it is located, provided the **lot** conforms to the applicable requirements of the Berrien County Health Department.
 - 2. The main **building** on a **lot** shall be located so that it meets the **yard setback** requirements of the **Zone District** in which it is located.

SECTION 3.02

HEIGHT EXCEPTIONS

- A. The following **buildings** and **structures** shall be exempt from **height** regulations in all Districts: parapet walls not exceeding four (4) feet in height, chimneys, cooling towers, elevator bulkheads, fire towers, grain elevators, silos, stacks, elevated water towers, stage towers, scenery lofts, monuments, cupolas, domes, spires, penthouses housing necessary mechanical appurtenances, or wind-powered electrical generators.
- B. Television and radio reception and transmission antennas, and towers for **commercial wireless telecommunication services** which do not exceed one hundred (100) feet in **height** shall also be exempt from height requirements. Those structures exceeding one hundred (100) feet in **height** shall be subject to Special Land Use approval, as indicated in the appropriate **zoning districts**.
- C. Additions to existing **buildings** and **structures** which exceed the **height** limitations of their District as of the effective date of this Ordinance may be constructed to the height of the existing **building** to which the addition is attached provided that the **lot** is large enough to encompass a circular area with a radius at least equal to the **height** of the tallest **structure** or **building**.

SECTION 3.03

PRINCIPAL USE

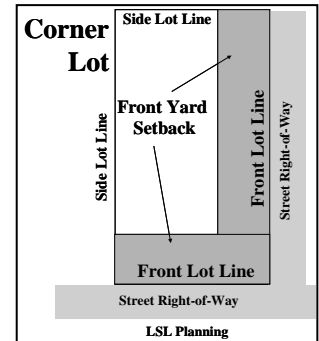
- A. No **lot** or parcel of land shall contain more than (1) **main building** or one (1) **principal use**.
- B. Land and **buildings** may be considered a **principal use** collectively if the following conditions are met.
 - 1. The land and **buildings** are planned and designed as a single integral development, including joint parking, compatible architecture, shared driveways, shared signs, and other similar features.
 - 2. All uses, if not the same, shall be similar in function and/or operation.

SECTION 3.04 STREET ACCESS

Any **lot** of record created after the effective date of this Ordinance shall front upon a **public street** or an approved **private street** and shall contain a minimum **frontage** equivalent to at least fifty (50) percent of the required **lot width**.

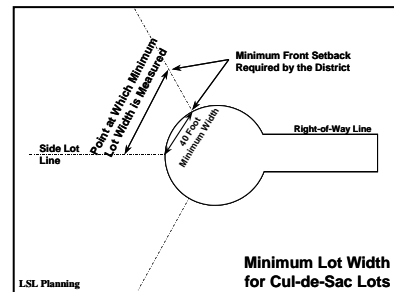
SECTION 3.05 BASIS OF DETERMINING FRONT YARD REQUIREMENTS

- A. The **front yard setback** line shall be measured from the right-of-way or easement line for metes and bounds parcels or the front lot line in all other cases, to an imaginary line across the **width** of the **lot** drawn at the minimum **required front setback** distance for that **district**, except as noted elsewhere in this section.
- B. Where an average **setback** line less than that required by this Ordinance has been established by existing **buildings** located within two hundred (200) feet of the proposed **building** on the same side of the **street**, the average **setback** shall apply.
- C. On **corner** and **through lots**, the **front yard** requirements shall apply on both **streets**.
- D. In the case of a row of **double frontage lots**, one (1) **street** will be designated as the front **street** for all **lots**. Where there are existing **structures** fronting on one (1) or both of the **streets**, the required **front yard setback** shall be observed on those streets where the **structures** presently front.
- E. On **waterfront lots**, the **front yard** requirements shall apply on the waterfront side of the **lot**. The **street** side, or **lot line** opposite the **front lot line** shall be considered the **rear lot line**.



SECTION 3.06 MINIMUM LOT WIDTH FOR CUL-DE-SAC AND IRREGULAR SHAPED LOTS

The minimum **lot width** for a **lot** on a cul-de-sac or other irregularly shaped **lot** shall be measured at the **front yard setback line** and shall not be diminished throughout the rest of the **lot**. These **lots** shall have a minimum width of forty (40) feet at the **front property line**.



SECTION 3.07 PROJECTIONS INTO YARDS

- A. Architectural features may project a maximum of four (4) feet into a **front** or **rear yard setback** area, but shall not project into the **side yard setback**.
- B. **Porches**, terraces, decks, balconies, window awnings, and similar **structures** which are open on three (3) sides, unenclosed, and uncovered and project six (6) inches or more above the surrounding grade:
 1. may project a maximum of ten (10) feet into a **front yard setback** area;
 2. may project a maximum of fifteen (15) feet into a **rear yard setback** area; but

3. shall not project into a **side yard setback** area; nor
 4. be placed closer than ten (10) feet to any **front** or **rear lot line**.
- C. If these **structures** are permanently enclosed on any side or covered in any manner they shall be considered part of the **main building**.

SECTION 3.08

ACCESSORY BUILDINGS, STRUCTURES AND USES

- A. **Accessory buildings**, including enclosed porches, walls, roofs, or garages, attached to, or within ten (10) feet of, dwellings or other **main buildings**, shall be deemed a part of the **buildings** and must conform to all regulations of this Ordinance applicable to the **main buildings**.
- B. Except for **buildings** related to active farming operations, an **accessory building** or use shall only be permitted on a **lot** which contains a **principal use** or **main building**.
- C. No part of an **accessory building** shall be used as a **dwelling**.
- D. Detached **accessory buildings** shall be located:
1. At least ten (10) feet from a **main building**;
 2. At least ten (10) feet from any rear lot line and five (5) feet from any side lot line;
 3. At least twenty (20) feet from the rear lot line on a through lot; and
 4. At least sixty (60) feet from the front lot line.
- E. Setbacks for **accessory buildings** shall be measured to the eaves of the **building**.
- F. **Accessory buildings**, sizes, and **heights**.
1. The total area for all **accessory buildings** shall not exceed the floor areas noted in 2 and 3, below.
 2. Maximum **gross floor areas** and **heights** for **buildings** accessory to **single** and **two family dwellings**:

Lot Size	Maximum Size	Height
Less than two (2) acres	1,200 square feet	14 feet
Two (2) acres but less than three (3) acres	1,700 square feet	18 feet
Three (3) acres but less than four (4) acres	2,200 square feet	22 feet
Four (4) acres but less than five (5) acres	2,700 square feet	22 feet
Five (5) acres or more	3,200 square feet	22 feet

3. Maximum floor areas for **buildings** accessory to other uses:
 - a. **Buildings** accessory to agricultural operations: no size limitation.
 - b. **Multiple family** developments: same as section 3.08 F.1., excluding garages or carports for the use of residents.
 - c. **Manufactured home parks**: as required by Chapter 10.

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- d. **Nonresidential** uses in **Residential Districts**: not to exceed twenty-five percent (25%) of the **gross floor area** of the **main building(s)**.
 - e. Other uses in **Nonresidential districts** shall not exceed the lot coverage limitations for the district.
- 4. Except for **accessory buildings** used for **agricultural** operations **accessory buildings** in **Nonresidential Districts** may be constructed to the permitted maximum **height** for the **zoning district** in which it is located.
 - 5. A maximum of two (2) **accessory buildings** whose aggregate floor area does not exceed the limits of paragraph 1. above shall be permitted on any one (1) parcel.
- G. Accessory storage of **hazardous substances**.
- The accessory storage of **hazardous substances** shall be subject to the following provisions.
- 1. A description of any **hazardous substances** expected to be used, stored or disposed of on the site shall be provided to the Niles Charter Township Building Department. Three copies of this information, including MSDS data sheets, describing the type of materials, quantity, location within the site and method of containment shall be provided.
 - 2. Documentation of compliance with federal and state requirements, and a Pollution Incident Prevention Plan (PIPP) shall be submitted to the Niles Charter Township Building Department.
 - 3. Any discharge of wastewater to a storm sewer, drain, lake, stream or other surface water shall be documented and appropriate permits obtained from the Department of Environmental Quality, Surface Water Quality Division. Any discharge of liquids, sludges, wastewater and/or wastewater residuals into or onto the ground shall be documented and appropriate permits obtained from the Department of Environmental Quality, Waste Management Division.
 - 4. A detailed description of any underground storage tanks and the materials to be stored shall be documented and appropriate permits obtained from the State Police Fire Marshal Division, Hazardous Materials Section.
 - 5. Storage of pesticide or fertilizer in quantities greater than fifty five (55) gallons or one hundred (100) pounds shall be documented and appropriate permits obtained from the Michigan Department of Agriculture, Pesticide and Plant Pest Division.
- H. **Commercial Wireless Telecommunication Service Antennas**
- 1. Antennas for **commercial wireless telecommunication services** shall be required to locate on an existing or approved tower or **building** unless one (1) or more of the following conditions exists:
 - a. The planned equipment would exceed the structural capacity of the existing or approved tower or **building**, as documented by a qualified and registered professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - b. The planned equipment would cause interference materially affecting the usability of other existing or planned equipment at the tower or **building** as documented by a qualified and registered professional engineer and the interference cannot be prevented at a reasonable cost.
 - c. Existing or approved towers and **buildings** within a one (1) mile radius cannot accommodate the planned equipment at a **height** necessary to function reasonably as documented by a qualified and registered professional engineer.

- d. The wireless communication provider entity under consideration for co-location will not undertake to pay market rent or other market compensation for co-location.
 - e. Other unforeseen reasons that make it infeasible to locate the planned equipment upon an existing tower or **building**.
- 2. Antennas for **commercial wireless telecommunication services** shall be considered a permitted accessory use in any zoning district when:
 - a. Placed on or attached to any existing structure which constitutes a principal use, including existing communication towers and water towers provided that any antenna shall not extend more than thirty (30) feet above the roofline of the structure to which it is attached.
 - b. Placed on an existing utility or light pole which will serve as a wireless telecommunications facility and where the height of said existing pole or other structure is not increased more than twenty (20) feet and the existing pole and other structure is not proposed to be modified in a manner which would materially alter the pole or structure and/or result in an impairment of sight lines or other safety interest.
 - c. Associated wireless telecommunication equipment shelters meet accessory use height and setback requirements of the district, and receive administrative approval.
 - d. This Section shall not exempt the applicant from such other government review and permitting procedures of the Federal Communications Commission or Federal Aeronautics Administration

SECTION 3.09**REGULATIONS APPLICABLE TO ALL SINGLE-FAMILY DWELLINGS**

It is the intent of this Section to establish minimum standards of construction and appearance for all **single-family dwellings** placed in the **Township**, whether constructed as a **manufactured home** or constructed on a lot. Construction and placement of a **single-family dwelling** on any **lot** or parcel shall be permitted only if the **dwelling** complies with all of the following standards:

- A. If the **dwelling unit** is a **manufactured home**, the **manufactured home** must either be:
 - 1. new and certified by the manufacturer or appropriate inspection agency as meeting the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban Development of 1976, as amended, or any similar successor or replacement standards which may be promulgated; or
 - 2. used and certified by the manufacturer or appropriate inspection agency as meeting the standards referenced in subsection (1) above, and found, on inspection by the Building Official or his designee, to be in excellent condition, safe and fit for residential occupancy.
- B. The **dwelling unit** shall comply with all applicable building, electrical, plumbing, fire, energy and other similar codes which are or may be adopted by the County or **Township**, and with applicable federal or state standards or regulations for construction. Appropriate evidence of compliance with the standards or regulations shall be provided to the Building Official.
- C. The **dwelling unit** shall comply with all restrictions and requirements of this Ordinance, including, without limitation, the **lot area**, **lot width**, residential **floor area**, **yard**, and **building height** requirements of the District in which it is located.

- D. The **dwelling unit** shall be firmly attached to a permanent continuous foundation which complies with applicable provisions of the building code enforced by the **Township**.
- E. If the **dwelling unit** is a **manufactured home**, it shall be installed with the wheels and towing mechanism removed.
- F. The **dwelling unit** shall have a minimum horizontal dimension across any front, side or rear elevation of twenty-four (24) feet at time of manufacture, placement or construction. A minimum floor to ceiling height of seven and one-half (7 ½) feet shall also be provided.
- G. The **dwelling unit** shall be connected to public sewer and water supply systems, or to private facilities for potable water and disposal of sewage approved by the Berrien County Health Department.
- H. The foregoing standards shall not apply to a **manufactured home** located in a **manufactured home park** licensed by the Michigan Manufactured Home Commission and approved by the **Township** according to the provisions contained in Chapter 10, of this Ordinance except to the extent required by state or federal law.

SECTION 3.10**TEMPORARY USES OR BUILDINGS REQUIRING ZONING ADMINISTRATOR AUTHORIZATION**

- A. Upon application, the **Zoning Administrator** may issue a permit for the following temporary **buildings** or uses. Each permit shall specify a location for the **building** or use and shall be valid for a period of not more than twelve (12) calendar months. Permits may be renewed by the **Zoning Administrator** for one (1) or more additional successive periods of six (6) calendar months or less at the same location and for the same purpose.
 - 1. Temporary office **building** or construction yard incidental and necessary to construction at the site where located.
 - 2. Temporary sales office incidental and necessary for the sale or rental of real property in a new subdivision or housing project. In any case, the temporary office shall be removed when fifty percent (50%) or more of the **lots** or units have been sold or leased.
 - 3. Any model home shall be converted to a permanent residence when fifty percent (50%) or more of the lots of units have been sold.
 - 4. The applicant shall pay a fee to the Township Treasurer as determined by the **Township Board** for the permit.
- B. In considering authorization for all temporary uses or **buildings**, the **Zoning Administrator** shall consider the following standards and may attach reasonable conditions to temporary uses or **structures** to ensure that the standards of this Section are met. The **Zoning Administrator** shall determine that:
 - 1. The use or **structure** will not have an unreasonable detrimental effect upon adjacent properties.
 - 2. The use or **structure** is reasonably necessary for the convenience and safety of the construction proposed.
 - 3. The use or **structure** does not adversely impact the character of the surrounding neighborhood.

4. Access to the use area or **structure** is at a safe location and will not create a traffic hazard.
5. Construction complies with all applicable codes and ordinances.

SECTION 3.11 FENCES

- A. Construction of a **fence** requires approval from the **Zoning Administrator** by filling out a Zoning Compliance Report.
- B. **Fences** shall not be constructed in any public right-of-way.
- C. Unless provided for elsewhere in this Ordinance, a **fence** may not exceed a **height** of four (4) feet within any **front yard setback** area.
- D. Except as noted in Section 3.11, D and E, **fences** outside the **front yard setback** shall not exceed a height of eight (8) feet;
- E. No **fence** shall contain any barbed wire or electrification unless necessary for livestock purposes. Barbed wire may be used for security in a **Nonresidential District**, or for the protection of public utility **buildings** or improvements. The barbed portion of the **fence** shall be at least six (6) feet from the ground, in which case the height of a **fence** may extend to a maximum of seven (7) feet.
- F. **Fences** used to enclose vacant land or land used for agricultural purposes may be erected within any **yard**, provided that any **fence** over four (4) feet in height shall be not greater than fifty percent (50%) opaque.
- G. Densely landscaped areas, such as hedges and closely spaced shrubs, bushes or other growing plants, may be considered a **fence** when they have the effect or accomplish the purposes normally associated with **fences**.

SECTION 3.12 GREENBELTS AND LANDSCAPING

- A. In order to provide protective screening for **Residential Districts** or uses adjacent or near **Nonresidential Districts** or uses, a landscaped greenbelt may be required by the **Township** to be installed on the **Nonresidential District** or use property.
- B. A required greenbelt shall be a strip at least ten (10) feet in width planted and maintained with evergreens, such as spruce, pines, or firs at least five (5) feet in height, or a hedge of evergreens at least four (4) feet in height, at time of planting. The greenbelt shall be situated so as to provide an effective sound and visual permanent buffer.
- C. The portion of the landscaped area not covered by plantings shall be kept in a healthy growing condition, neat and orderly in appearance.
- D. Any shrubs, bushes or other growing plants which project into or across adjacent land may be trimmed back to the property line by the adjacent property owner.

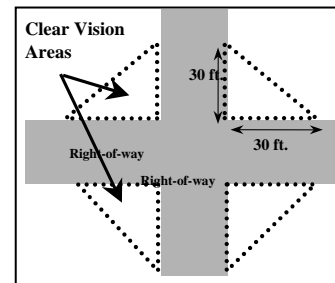
- E. Required landscaping shall be kept in a healthy growing condition and any plant materials required as part of the greenbelt which die shall be replaced by the property owner.

SECTION 3.13 INSTALLATION OF LANDSCAPING

- A. Any site on which a use permitted by this Ordinance is established shall, within six (6) months after a certificate of occupancy is issued, install a lawn or other type of living ground cover for land areas disturbed as a result of construction and not covered by impervious or graveled surfaces. Such landscaped areas shall be reasonably maintained thereafter or replaced.
- B. A performance guarantee as provided in Section 23.05 may be required by the **Township** to ensure that landscaping is installed within the six (6) month period.
- C. No landscape materials other than lawn and street trees approved by the Berrien County Road Commission\MDOT shall be planted within any public street right-of-way.

SECTION 3.14 CLEAR VISION AREAS

- A. No plantings, fencing, or other **structures** shall be established or maintained on any **corner lot** which will obstruct the view of a vehicle driver approaching the intersection.
- B. An unobstructed corner shall mean a triangular area formed by the **street** property lines or right-of-way easement line for lots with the front lot line in the center of the right-of-way, and a line connecting them at points thirty (30) feet from the intersection of the **street** or easement lines, as applicable, or in the case of a rounded property corner from the intersection of the **street** property lines or easement lines extended, as applicable.
- C. This shall not prohibit the planting of shrubbery which will not achieve a height at maturity of more than thirty (30) inches or erection of a fence up to a height of three (3) feet, provided such fence is no more than fifty (50) percent solid.
- D. No vegetation or **structure** shall be maintained in any **setback** area which, in the opinion of the **Zoning Administrator**, will obstruct the view of vehicles entering or leaving the site from driveways or adjacent roadways.



SECTION 3.15 ESSENTIAL SERVICES

The erection, construction, alteration or maintenance of **essential services**, shall be permitted as authorized or regulated by law and other ordinances in any **District**, it being the intention to exempt the erection, construction, alteration, and maintenance from the application of this Ordinance.

SECTION 3.16
TEMPORARY STORAGE OF USED MATERIALS

- A. The storage, collection, or placing of used or discarded material, such as lumber, scrap iron, ashes, slag or other commercial or industrial by-products or waste is prohibited without a Temporary Permit obtained from the **Zoning Administrator** or his designee, which shall be accompanied by a performance guarantee.
- B. In reviewing the request, the **Zoning Administrator** shall consider the length of time requested, the visibility of the storage area from surrounding properties, potential safety concerns, the ability to provide adequate security fencing and aesthetic screening, and other factors relevant to the specific location.

SECTION 3.17
ILLEGAL DWELLINGS

- A. The use of any **basement** for dwelling purposes is forbidden in any **Zoning District** unless said **basement** meets the appropriate building codes for the Township, County, or state and the remainder of the **dwelling** has been completed and available for occupancy.
- B. **Buildings** erected as **garages** or **accessory buildings** shall not be occupied for dwelling purposes.

SECTION 3.18
EXCAVATIONS

- A. The construction, maintenance, or existence within the **Township** of any unprotected, unbarricaded, open, or dangerous excavations, holes, pits, or wells, which constitute or are likely to constitute a danger or menace to the public health, safety, or welfare, are hereby prohibited.
- B. This Section shall not prevent any excavation under a permit issued by the Building Official where the excavations are properly protected and warning signs posted in a manner as approved by the Building Official.
- C. This Section shall not apply to streams, natural bodies of water, or to ditches, reservoirs, and other bodies of water created or existing by authority of governmental units or agencies.
- D. This Section shall not include excavations related to approved operations for the commercial removal and processing of topsoil, stone, rock, sand, gravel, lime or other soil or mineral resources as regulated by Niles Charter Township.

SECTION 3.19
OUTDOOR STORAGE IN RESIDENTIAL DISTRICTS

- A. The outdoor storage or parking of recreational vehicles in all **Residential Districts** shall be subject to the following minimum conditions:
 - 1. Any **recreational vehicles** parked outside, shall not be located in any required **front yard** or closer than three (3) feet to any property line.
 - 2. Storage or parking of the vehicles shall be limited to the **lot** or parcel upon which the owner of the vehicle also makes his primary residence. The lease of space for storage or

parking of **recreational vehicles** for compensation shall not be permitted in a **Residential District**.

3. **Travel trailers** and other vehicles or equipment intended or adaptable for sleeping purposes shall remain unoccupied and shall not be connected to sanitary sewer facilities or have a fixed connection to electricity, water, or gas, provided that the equipment may be parked and used for living or housekeeping purposes for a period not exceeding fourteen (14) days in any six (6) month period, provided that running water or indoor sewage facilities within the equipment is not utilized.

SECTION 3.20 SATELLITE DISH ANTENNAS

A. **Nonresidential Districts:**

1. The dish antenna shall be permitted in an interior **side** or **rear yard**, or mounted on top of a **building**, and securely anchored.
2. The nearest part of the antenna shall be at least five (5) feet from any property line.
3. The **height** shall not exceed the **height** restrictions in the **Zoning District** in which the proposed device is to be located.

B. **Residential Districts:**

1. The antenna shall be permitted in the **rear yard** only.
2. The nearest part of the antenna shall be at least (5) feet from any property line.
3. The unit shall be securely anchored as determined by the **Zoning Administrator**.
4. The maximum **height** measured from the ground to the top edge of the dish shall be fourteen (14) feet.
5. The antenna shall be an unobtrusive color, as approved by the **Zoning Administrator**.

- C. No portion of the antenna shall contain any name, message, symbol, or other graphic representation.

- D. A site plan shall be submitted to the **Zoning Administrator** for approval prior to the issuance of a zoning permit. The site plan shall include the proposed location of the antenna and an elevation drawing showing the proposed height, color, and foundation details.

- E. These regulations shall not apply to antennas that have a diameter of one (1) meter or less in **Residential Districts**, or two (2) meters or less in **Non-residential Districts**.

- F. These regulations are formulated to ensure that adequate protection measures are provided in the Ordinance for ensuring that sight distance is not impaired, that the dish antennas are located and constructed in a manner which will not afford the potential for injury, and to ensure that the intent and purposes of this Ordinance are met.

- G. The **Zoning Administrator** shall be permitted to waive or modify in writing any of these restrictions to the minimum extent necessary to permit full reception and use of the dish antenna, if existing **buildings**, vegetation, topography, or other factors cause interference with reception.

SECTION 3.21
EXTERIOR LIGHTING

- A. All lighting shall be directed away from, and if necessary shall be shielded to prevent the shedding of light onto adjacent properties or roadways.
- B. Light poles used to illuminate parking lots or storage areas shall be limited to twenty-five (25) feet in **height**.
- C. Lights used for canopies for uses such as **vehicle service stations, drive-in establishments** and other similar uses shall be completely recessed in the canopy **structure** and shall not extend lower than the underside surface of the canopy.
- D. Lighting of parking areas, **buildings, or structures** shall be minimized to reduce light pollution and preserve the rural character of the **Township**.

SECTION 3.22
HOME OCCUPATIONS

- A. **Home occupations** shall be approved by the **Zoning Administrator**. An application for a permit for a **home occupation** shall be accompanied by a letter from the applicant indicating the nature of the **home occupation** and sufficient facts to indicate that the **home occupation** will comply with the requirements of this Section.
- B. No persons other than the resident occupants shall be engaged in the **home occupation**.
- C. The use of the dwelling unit for the **home occupation** shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- D. The **home occupation** shall be operated in its entirety within the principal dwelling, but shall not in any case, exceed a total area greater than twenty five percent (25%) of the **usable floor area** of the **dwelling unit**.
- E. No articles or materials used in connection with the **home occupation** shall be stored other than in the **main building**.
- F. Only those materials produced on the premises as a result of the **home occupation**, or are clearly related and incidental to the **home occupation**, may be provided for sale
- G. No merchandise or articles for sale shall be displayed for advertising purposes, and no sign or device relative to the sale of the merchandise shall be displayed on the premises.
- H. There shall be no change in the outside appearance of the **building** or premises, or other visible evidence of the conduct of the **home occupation** other than one (1) **sign**, not exceeding two (2) square feet in area, non-illuminated, and mounted flat against the wall of the **main building**.
- I. No traffic shall be generated by such **home occupation** in greater volume than would normally be expected in a residential neighborhood. Parking areas for the **home occupation** shall be located off the **street**, and shall not be located in the **front yard setback** area.

- J. No equipment or process shall be used in the **home occupation** which creates noise, vibration, glare, fumes, odors, or electrical interference detectable off the premises. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or cause fluctuation in line voltage off the premises.

SECTION 3.23 SEASONAL USES

- A. The **Zoning Administrator** may issue a permit for the temporary sale of merchandise, in the LB or GB Districts only, related to a seasonal or periodic event. Seasonal uses shall include the sale of Christmas trees, and similar activities, but shall not include **roadside stands**.
- B. In considering a request for a temporary permit, the **Zoning Administrator** must determine that the operation of the use is seasonal in nature and will not be established as a permanent use. The **Zoning Administrator** will also determine:
1. That the use does not have an unreasonable detrimental effect upon adjacent properties.
 2. That the use does not impact the nature of the surrounding neighborhood.
 3. That access to the area will not constitute a traffic hazard due to ingress or egress.
 4. That adequate off-street parking is available to accommodate the use.
- C. Each permit shall be valid for a period of not more than two (2) calendar months and may be renewed by the **Zoning Administrator** for up to one (1) additional successive month, provided the season or event to which the use relates is continued.

SECTION 3.24 NONCONFORMING BUILDINGS, STRUCTURES, AND USES

- A. General Conditions
1. Except where specifically provided to the contrary, and subject to the provisions of this Section, the use of any **building** or **structure** or of any land or premises which is existing and lawful on the effective date of this Ordinance, or in the case of an amendment to this Ordinance, then on the effective date of the amendment, may be continued even though the use does not conform with the provisions of this Ordinance or any amendment thereto.
 2. Except where specifically provided to the contrary and subject to the provisions of this Section, a **building** or **structure** which is existing and lawful on the effective date of this Ordinance, or, in the case of an amendment of this Ordinance, then on the effective date of the amendment, may be maintained and continued even though the **building** or **structure** does not conform with the provisions of this Ordinance or any amendment thereto.
- B. **Nonconforming buildings and structures:** Extensions, enlargements, alterations, remodeling, or modernization.
1. **Nonresidential Districts.**
 - a. **Nonconforming buildings or structures** in **Nonresidential Districts** may be extended, enlarged, altered, remodeled or modernized when the **Zoning Board of Appeals** determines that the following conditions are met:

- (1) The **building** or **structure** complies with all **height**, area, and parking and loading provisions with respect to the extension, enlargement, alteration, remodeling or modernization.
- (2) The alteration, remodeling, or modernization does not substantially extend the life of any **nonconforming building** or **structure**.
- (3) The enlargement or extension is limited to the same parcel the **nonconforming use** was located on at the time of the adoption of the existing Niles Charter Township Zoning Ordinance.
- (4) The enlargement or extension does not interfere with the use of other properties in the vicinity.
- (5) The enlargement or extension does not exceed fifty percent (50%) of the **GFA** of the original **building** when it became **nonconforming**.

- b. Any **building** or **structure** which is **nonconforming** by reason of parking or loading provisions and which later provides additional parking or loading spaces to meet the provisions of this Ordinance, shall not be permitted to use the additional spaces to meet requirements for another extension, enlargement, or change of use which requires additional parking or loading spaces, without providing the spaces.

2. **Residential Districts** and Uses.

- a. **Nonconforming** residential **buildings** or **structures** may be extended, enlarged, altered, remodeled or modernized when the **Zoning Administrator** determines that the following conditions are met:
 - (1) The enlargement or extension is limited to the same parcel the **nonconforming building** or **structure** was located on, at the time of the adoption of the existing Niles Charter Township Zoning Ordinance.
 - (2) The enlargement or extension will not interfere with the use of other properties in the vicinity.
 - (3) The enlargement or extension shall not further encroach into any **setback** area.

C. Restoration and Repair

1. Subject to the provisions of this Section, nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any part of any **building** or **structure** which is unsafe.
2. All repairs and maintenance work required to keep a **nonconforming building** or **structure** in sound condition may be made, but it shall not be structurally altered to permit the use of the **building** or **structure** beyond its natural life except for repairs necessary to maintain public safety.
3. Nonconforming **buildings** or **structures** damaged by fire, wind, act of God or public enemy may be reconstructed provided that the reconstruction does not increase the prior nonconformity.
4. Any reconstruction shall commence within one (1) year of the date on which the **structure** was damaged. Further, the work must be completed and eligible for occupancy, as determined by the **Building Official**, within eighteen (18) months of the date on which the **structure** was damaged.

D. Nonconforming uses – Change, Enlargement, or Discontinuance

1. Except as noted in 2, below, the **nonconforming use** of a **building** or **structure** or of any land or premises shall not be:
 - a. Re-established after it has been changed to a conforming use.
 - b. Re-established after abandoned or discontinued for a continuous period of twelve (12) consecutive months, or for eighteen (18) months within any three (3) year period. A **nonconforming use** shall be determined to be abandoned or discontinued if one (1) or more of the following conditions exists, and are deemed to constitute an intent on the part of the property owner to abandon the **nonconforming use**:
 - (1) Utilities, such as water, gas and electricity to the property, have been disconnected;
 - (2) The property, **buildings**, and grounds, have fallen into disrepair;
 - (3) **Signs** or other indications of the existence of the **nonconforming use** have been removed;
 - (4) Removal of equipment or fixtures which are necessary for the operation of the **nonconforming use**;
 - (5) Other actions, which in the opinion of the **Zoning Administrator**, constitute an intention of the part of the property owner or lessee to abandon the **nonconforming use**.
2. The **Zoning Administrator** may permit a **nonconforming use** to be converted to a more conforming use. In considering permission, the **Zoning Administrator** shall use the following standards in making his or her decision:
 - a. The **building** or premises may be changed to a Permitted Use for the **Zoning District** in which the existing **nonconforming use** is located. However, the new use shall not require more off-street parking than exists on the premises.
 - b. The use of the **building** or premises may be changed to another nonresidential use which would be permitted by right in a more restricted **Zoning District**, than it is located in. For this purpose, the least restrictive district is the LB District.
 - c. The use shall be performed entirely within an enclosed **building**.
3. No nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of the adoption or amendment of this Ordinance.

E. Any **building or **structure** shall be considered existing and lawful, and for purposes of Section 3.24, A, to have been in use for the purpose it was constructed if:**

1. On the effective date of this Ordinance, a building permit has been obtained for the **building**; or
2. If no building permit is required, a substantial start has been made toward construction, and construction is thereafter pursued diligently to conclusion.

F. Any **structures or uses which fail to conform to the previous Niles Charter Township Zoning Ordinance, were not constructed or used legally, were not permissible **nonconforming uses** or **structures** thereunder, or which violated that Zoning Ordinance, shall not be considered**

nonconforming uses or **structures** under this and any other law or ordinance. These **structures** or uses shall be considered illegal, a nuisance, and subject to the enforcement provisions of this Ordinance and all other Township Ordinances.

SECTION 3.25 DEMOLITION PERMITS

No **buildings** shall be razed until a demolition permit has been obtained from the **Building Official**.

SECTION 3.26 PRIVATE STREETS

- A. Purpose. The Township determines that it is in the best interest of the community to regulate the construction, improvement, extension, relocation, and use of **private streets**. These provisions have been enacted to assure that:
1. proposed **private streets** will not be detrimental to the public health, safety, or general welfare;
 2. proposed **private streets** will not adversely affect the long term development policies of Niles Charter Township;
 3. **private streets** will be designed and constructed with adequate width, surface, and *grade* to assure safe passage and maneuverability of private vehicles, police, fire, ambulance, and other safety vehicles.
 4. **private streets** will be constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and the natural environment of the Township.
- B. Frontage and Access.
1. All parcels utilizing a **private street** shall have frontage on the approved private road for a distance equal to or greater than the minimum **lot width** required for the District in which the parcel is located. The **lot width** for cul-de-sac or irregular lots shall be determined as described in Section 3.06.
 2. All **private streets** shall have direct access to a public road.
- C. Permits.
1. No individual, association, corporation, or entity, either public or private, shall construct, upgrade, or extend a **private street** after the effective date of this Ordinance without first having obtained a private road permit from the **Zoning Administrator**.
 2. The Building Official shall not issue certificates of occupancy for any **building** or **structure** on lots or condominium units served by a **private street** until construction of the **private street** is completed to the extent required by the Planning Commission.
 3. A Soil Erosion and Sedimentation Control permit shall be obtained from the Berrien County Drain Commission, as may be required by the Soil Erosion and Sedimentation Control Act of 1972, as amended.
 4. All other required State of Michigan permits shall be obtained.
 5. The Planning Commission or the Building Official may elect to have all design and construction plans reviewed by the Township's attorney, engineer, or planner prior to consideration of the application for the **private street** permit.
- D. Application. The application for a **Private Street** shall be submitted to the Zoning Administrator and processed under the following procedures:

1. An application shall be submitted to the Zoning Administrator and shall contain the following:
 - a. An application form and fee as established by the Township Board.
 - b. A detailed written description of the development to be served by the *private street*.
 - c. Ten copies of a site plan, drawn to scale (at least 1"=100'), showing a general location sketch, the precise location, **grade**, route, elevation, dimensions, and design of the **private street** and any proposed extensions thereto, existing and proposed curb cuts, and the location and distance to any **public street** which the **private street** is to intersect.
 - d. A survey of the right-of-way by a registered land surveyor, together with surveys for each parcel to be served by the **private street**.
 - e. The site plan shall be prepared by a registered professional engineer, land surveyor, architect, or landscape architect and shall contain the professional seal of the preparer.
 - f. The location of all public utilities, including, but not limited to, water, sewer, telephone, gas, electricity, and television cable to be located within the **private street** easement or within twenty feet of either side thereof. Copies of the instruments describing and granting such easements shall be submitted with the application.
 - g. The location of any lakes, streams, wetlands, drains, and slopes (over 20%) within the proposed easement or within 100 feet thereof.
 - h. The location of any other **buildings** and **structures** located, or to be located, within 100 feet of the **private street** right-of-way.
2. Review procedures will be as follows:
 - a. The application, along with all other required information, shall be submitted to the Zoning Administrator.
 - b. The Planning Commission shall hold a public hearing on the application, after establishing a date for the hearing, and providing notice of such hearing in a newspaper of general circulation in the Township and to all property owners within 300 feet of the parcel containing the private road at least five days, but not more than fifteen days prior to such hearing.
 - c. The **Planning Commission** shall consider the request based on the standards of Sec. 3.26E, as well as the approval standards of Sec. 3.26F, and all other relevant provisions of this Ordinance. The **Planning Commission** shall make a recommendation to the **Township Board** to preliminarily approve, approve with conditions, or deny the request.
 - d. The **Township Board** shall then review the application and such other information available to it through the public hearing or from any other sources, including recommendations or reports of the Planning Commission, and shall approve, approve with conditions, or deny the request, and state the basis for the decision and any conditions which will be imposed.
 - e. No petition for Private Road approval, which has been disapproved, shall be resubmitted for a period of one year from the date of disapproval, except as may be permitted after learning of new and significant facts or conditions which might result in favorable action upon resubmittal.
 - f. In order to request placement on the Township Board agenda for final approval, the applicant shall obtain and/or complete the following:
 - (1) Final inspection and approval of private road plans by the Townships

- Engineer
- (2) Street sign and traffic control device plans
 - (3) Underground utility plans
 - (4) Eight copies of recorded land survey and legal descriptions showing easements for underground electrical and communication service lines, drainage, sanitary sewer, private road and dedication of any public road right-of-way.
 - (5) Two copies of recorded road maintenance agreement.
 - (6) Two copies of recorded deed restrictions and easements

g. Final approval shall be given if the private road is in compliance with this Section, imposed conditions, and other Ordinance requirements.

E. Design Requirements. The construction of **private streets** shall conform to the Road Commission construction standards for local roads, excepting pavement width and **grade** requirements and as otherwise provided in this Ordinance, as follows:

1. No **private street** shall extend for a distance of more than 2,640 feet in length from the nearest **public street** right-of-way, as measured along the centerline of the **private street**, without a second direct access thereto being available from a **public street**.
2. All **private streets** shall have a recorded permanent right-of-way and easement with a minimum width of at least sixty-six (66) feet. The right-of-way shall also expressly permit public or private utilities to be installed within the right-of-way.
3. The area in which the **private street** is to be located shall have a minimum cleared width of 28 feet, which clearing shall always be maintained.
4. Pavement widths shall conform to the following table. Any **private street** serving 5 or fewer parcels which is subsequently extended to serve more than 5 parcels shall be upgraded in its entirety to meet the pavement width requirements of this Section.

Standards	Serving 5 or Fewer Lots	Serving More Than 5 Lots
Pavement Width	12 feet	22 feet
Materials	Road surface may be gravel, but shall meet the Berrien County Road Commission standards for a local gravel road.	Road surface may be gravel, but shall meet the Berrien County Road Commission standards for a local gravel road.

5. Any **private street** which terminates at a dead-end shall have a means for vehicle turn-around either by use of a cul-de-sac, with a minimum road surface radius of sixty (60) feet, or by a continuous loop **private street** system, both of which must be constructed in accordance with the standards set forth in this Section and approved by the Township Fire Department.
6. The road surface shall have a minimum crown of .02 foot per foot from the centerline of the **private street** to the outside edge thereof.
7. A road shoulder at least two 2 feet wide, composed of six inches of compacted gravel, shall be provided on each side of the private road surface and shall slope one-half inch per foot from the outside edge of the road surface to the toe of the slope.
8. The maximum longitudinal road **grade** shall not exceed six percent, provided that the Planning Commission may allow up to a ten percent **grade** if the applicant produces written justification, satisfactory to the Planning Commission, that an increase in the road *grade* will not adversely affect public safety and the design of the road system(s). The Planning Commission may seek written recommendations from the Township Engineer.

9. The layout of the **private street** and the intersections of the **private street** with either a public or **private street** shall be such that clear vision, safe turning and travel in all directions at the posted speed limit is assured, as determined by the Township engineer. The minimum distance between intersections of public and/or **private street** rights-of-way shall comply with Berrien County Road Commission Standards.
10. The **private street** shall be constructed with such storm water runoff, culverts, and drainage contours as is required by the Planning Commission and Berrien County Drain Commission to ensure adequate drainage and runoff.
11. The method and construction technique to be used in the crossing of any natural stream, wetland, or drainage course shall satisfy the requirements of the Township engineer and any other agency having jurisdiction thereof.
12. The **private street** shall be given a name and street **signs** shall be installed in accordance with the standards and approval of the Road Commission. The **private street** addresses shall be posted in a conspicuous place at the entrance to the **private street** in letters at least three inches high. **Private streets** serving two or more dwellings shall have a standard stop **sign** where the **private street** abuts the **public street**.
13. The maximum number of addresses on a single access cul-de-sac or dead end road shall not be more than fifty (50).
14. A person or persons shall not erect, construct, place or maintain any bumps, fences, gates, chains, bars, pipes, wood or metal horses or any other type of obstruction on any **private street** designed to limit access or control vehicular speed.

F. Approval Standards.

1. Prior to finally approving a *private street* permit application, the Planning Commission shall determine the following:
 - a. The proposed **private street** will not be detrimental to the public health, safety, or general welfare.
 - b. The proposed **private street** will not adversely affect the use of land.
 - c. That the **private street** is designed and constructed with width, surface, and **grade** to assure safe passage and maneuverability of private and public safety vehicles.
 - d. That the **private street** is constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and natural environment of the Township.
 - e. The ability of the **private street** to provide future connection to existing or proposed public-right-of-way or **private streets**.
2. The Planning Commission may require that the applicant comply with reasonable conditions relative to the design and construction of the **private street**.

G. Maintenance and Repairs.

1. All **private streets** shall be continuously maintained in such a way that they will not constitute a danger to the health, safety, and welfare of the inhabitants of the Township and are readily accessible to, and usable by emergency vehicles in all types of weather.
2. All costs for maintenance and repair of the **private street** shall be the responsibility of the property owners or property owners association where one exists.
3. The applicant(s)/owner(s) of the proposed **private street** right-of-way or **private street** shall provide the Planning Commission with a recordable **private street** maintenance or restrictive covenant agreement between the owner(s) of the **private street** right-of-way and any other parties having any interest therein (if less than five lots) or a property owner's association (if five or more lots) which shall provide that the **private street** shall be regularly maintained, repaired, and snow plowed so as to assure that the **private street** is safe for travel at all times and the cost thereof paid. The maintenance agreement shall at a minimum contain the following:
 - a. A method of initiating and financing of such road and/or easements in order to keep the road in a reasonably good and usable condition.
 - b. A workable method of apportioning the costs of maintenance and improvements.
 - c. A notice that no public funds of Niles Charter Township are to be used to build, repair, or maintain the **private street**.
 - d. Easements to the public for purposes of emergency and other public vehicles for whatever public services are necessary.
4. The applicant(s) agree, by filing an application for and receiving a permit under this Ordinance, that they will assure that any **building(s)** or parcels thereafter created or constructed on the **private street** shall also be subject to the street maintenance or restrictive covenant agreement and that said agreement shall be recorded and shall run with the land. Once approved by the Township, records shall be furnished to the Township prior to final approval of the **private street**.

H. Performance Guarantee.

The Planning Commission may, as a condition of the **private street** construction permit, require that the applicant provide a performance guarantee, in accordance with the provisions of Section 23.05, and waiver of liability.

I. Inspections/Certificate of Compliance.

1. Upon completion of construction of the **private street**, the Township **Zoning Administrator** or his designee shall inspect the completed construction to determine whether it complies with the approved plans, specifications, permit, and this Ordinance.
2. The applicant(s), at the applicant(s)'s expense, shall provide the Township with a set of "as built" drawings bearing a certificate and statement from a registered engineer certifying that the **private street** has been completed in accordance with the requirements of the permit.
3. If the completed **private street** does not satisfy the requirements of the permit or this Ordinance, the applicant(s) shall be notified of the noncompliance in writing and shall be given a reasonable period of time within which to correct the deficiencies. Failure to correct the deficiencies within the time provided shall subject the applicant(s) to the penalties provided for in Section 23.03.

J. Fees.

Fees for the permits required hereunder shall be set by the Township Board from time to time by resolution. Additionally, the Township Board may require that the applicant(s) put sufficient funds in escrow to cover the costs of having the Township attorney, engineer, planner, or other professional review the **private street** plans, specifications, and maintenance agreements, and to do the necessary inspections. All costs to be paid prior to final approval being granted with the balance of escrow account returned upon final approval. The fees shall not exceed the reasonable costs of providing the services.

K. Indemnification.

The applicant(s)/owner(s) of the **private street** agree that by applying for or securing a permit to construct the **private street** they shall indemnify and will hold the Township harmless from any and all claims for personal injury and/or property damage arising out of the use of the **private street** or of the failure to properly construct, maintain, use, repair, and replace the **private street**.

SECTION 3.27**MAXIMUM WIDTH TO DEPTH RATIO**

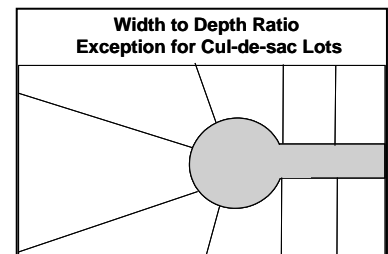
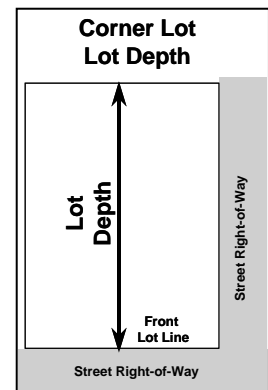
A. In all **Residential Districts**, no **lot** shall be created whose **lot** depth exceeds four (4) times its width, except for residentially zoned **lots** or parcels that have more than one half (1/2) of their **street frontage** on a cul-de-sac.

B. For purposes of this Section, the beginning points of a cul-de-sac shall be deemed to be the intersections of the radius of the cul-de-sac with the right-of-way lines of the **street** connected to the cul-de-sac.

C. In the case of an unimproved **corner lot** or corner parcel, the **depth** of a **lot** or parcel shall be measured midway between the **side lot lines** and from the **front lot line** to the **rear lot line** along the dimension of the **lot** comprising the greatest distance.

D. The **Zoning Board of Appeals** may permit the creation of a **lot** or parcel which does not comply with this Section. In determining whether to grant its approval, the **Zoning Board of Appeals** shall first find that:

1. The greater depth is necessitated by conditions of the land in question, such as topography, street access, soils, wetlands, or floodplain; and
2. The creation or use of the **lot** will not conflict with other **Township** Ordinances and regulations, unless an appropriate variance is received from other Ordinances or regulations.

**SECTION 3.28****SITE CONDOMINIUMS**

A. A site condominium unit shall be a unit created by the division of land on the basis of condominium ownership which is not subject to the provisions of the Land Division Act, Public Act 288 of 1967, as amended.

- B. A site condominium unit shall be treated as a separate **lot** or parcel. It may have **buildings** constructed on it, and uses conducted on it as allowed in the **Zoning District** in which it is located. However, the unit shall meet the District Regulations for the **Zoning District** in which it is located.
- C. A site plan, including all the condominium documents required for the establishment of a condominium, shall be reviewed and approved by the **Planning Commission** in accordance with Chapter 19.

SECTION 3.29 KEEPING OF ANIMALS

- A. The keeping of domestic or farm animals shall be considered customary to, and commonly associated with, the operation of the Permitted Uses or Special Land Uses, subject to the requirements of this Section.
- B. Any land, **building**, or **structure** where four (4) or more **small domestic animals** six (6) months of age or older are boarded, housed, or bred for commercial purposes shall be considered a **kennel**.
- C. **Kennels** shall only be permitted as required in the **Zoning District** in which the property is located. Any pen or **building** or **structure** housing these animals shall be a minimum of fifty (50) feet from any property line and a minimum of twenty (20) feet from any **dwelling unit**.
- D. Where animals other than house pets of the owner or occupant of the premises are kept or allowed outside, a suitable **fence** to keep the animals from leaving the premises at will, shall be provided and regularly maintained. House pets shall be kept on the premises of their owner.
- E. No more than four (4) **small domestic animals** shall be kept in a private residence, unless approved as a **kennel** pursuant to the provisions of this Ordinance.
- F. This Section shall not prohibit the keeping of small domestic animals or livestock for supervised youth agricultural experiences sponsored by an organization that is exempt from taxation under Section 501(c)(3) of the IRS Code of 1986, or by any subsequent corresponding IRS code of the United States as from time to time amended, in any area which is zoned for residential use, on lots of one (1) or more acres.

SECTION 3.30 SWIMMING POOLS

- A. Pools used for swimming or bathing shall be in conformity with the requirements of this Section. However, these regulations shall not be applicable to any pool less than twenty-four (24) inches deep or having a surface area less than two hundred (200) square feet, except where pools are permanently equipped with a water recirculating system.
- B. A swimming pool or appurtenances thereto shall not be constructed, installed, enlarged or altered until a **building permit** (if required) has been obtained.
- C. The outside edge of the pool wall shall meet the **side** and **rear yard setbacks** of the **zone district** in which it is located. Swimming pools shall not be located in the **front yard**.

- D. Each pool shall be enclosed by a fence or wall with a **height** of at least four (4) feet, sufficient to make the body of water inaccessible to small children. The enclosure, including gates therein, must be not less than four (4) feet above the underlying ground; all gates must be self-latching, and latches shall be placed four (4) feet above the ground or otherwise made inaccessible from the outside to small children. See Section 3.11 for other fence requirements.
- E. All swimming pool installations shall comply with any applicable Construction Codes and all other standard codes to which it refers.

SECTION 3.31

STORAGE AND REPAIR OF VEHICLES

- A. The carrying out of repair, restoration and maintenance procedures or projects on vehicles in any **Residential District** for the private use of the owner or occupant of the property on which the procedures or projects are conducted, shall be so conducted entirely within an enclosed **building**, except as may otherwise be provided herein.
- B. Procedures or projects which require the vehicle to be immobile or inoperable in excess of sixty (60) days within any twelve (12) month period shall not be carried out unless within an enclosed **building**.

SECTION 3.32

RIPARIAN ACCESS

The following restrictions are intended to limit the number of users of water bodies within the Township in order to preserve the quality of the waters, to promote safety, and to preserve the quality of recreational use for all users.

- A. In all Districts there shall be at least forty (40) feet of lake or river **frontage**, as measured along the shoreline or **ordinary high water mark** of the lake or river, for each **dwelling unit** utilizing or accessing such **frontage**. For example, a **multiple family building** with four (4) **dwelling units** would require one hundred and sixty (160) feet of **frontage** on the water to gain access to the lake or river for all of the units.
- B. Notwithstanding any other requirement of this Ordinance, any **lot**, providing riparian access shall meet the following requirements:
 - 1. A minimum of one hundred and fifty (150) feet of **frontage**, as measured along the shoreline or **ordinary high water mark**.
 - 2. A minimum **lot area** of thirty thousand (30,000) square feet.
 - 3. Only one (1) boat mooring per **dwelling unit** served by riparian access shall be permitted.
- C. The restrictions of this Section shall apply to all **lots** and parcels on or abutting any lake or river in all **Districts**, regardless of whether access to the waters shall be by easement, park, common-fee ownership, single-fee ownership, condominium arrangement, license, or lease.

SECTION 3.33
OPEN SPACE PRESERVATION

- A. Purpose: The purpose of this Section is to adopt “open space preservation” provisions consistent with Section 506 of the Zoning Act, which requires qualifying townships to permit lands satisfying specified criteria to be developed, at the option of the landowner, with the same number of dwellings on a portion of the land specified in the zoning ordinance, but not more than 50%, that could otherwise be developed, under existing regulations, on the entire land area.
- B. Qualifying conditions: Land may be developed under the provisions of this Section only if each of the following conditions are satisfied:
1. The land shall be zoned in the AP, RP, R-1A, or R-1B Zoning Districts.
 2. The development of land under this Section shall not depend upon the extension of a public sanitary sewer or a public water supply system to the land, unless the development of the land without the exercise of the clustering option provided by this Section would also depend on such extension; and
 3. The open space preservation option shall not have previously been exercised with respect to the same land.
- C. Permitted Uses: Only dwelling units and non-dwelling unit structures (as described in Section 3.33(f)(10) permitted by the zoning district in which the land is located shall be permitted on land developed, or used pursuant to the provisions of this Section.
- D. Application and Review Procedure: The application and review procedures for land proposed to be developed pursuant to this Section shall be those stated in Chapter 19 of this Ordinance, governing site development plans, except as otherwise provided in this Section. In addition to the application materials required by Section 3.33D of this Ordinance, an application for the development of land under the provisions of this Section shall include the following:
1. A Parallel Plan prepared for the purpose of demonstrating the number of dwelling units that could reasonably be developed on the land under its existing zoning if the open space preservation option were not exercised. The Parallel Plan may be conceptual in nature but shall include at least the following information:
 - a. Date, north arrow and scale, which shall not be more than 1" = 100, and, in all cases, the scale shall be the same as that utilized for the site development plan illustrating the proposed open space preservation development.
 - b. Location of street rights-of-way or easements.
 - c. Location of all lots, illustrating lot area and width to demonstrate compliance with the minimum requirements of the applicable zoning district.
 - d. Required building setback lines on all lots to demonstrate the availability of sufficient buildable land to make the lot usable.
 - e. Location of all utilities that would be necessary to serve a development under the Parallel Plan and which would not be located within any public road right-of-way or private street easement, or on buildable lots. Such utilities include, but are not limited to, storm water retention or detention basins, community sewage treatment systems and community water supply facilities.
 - f. If development under the Parallel Plan would require the use of septic tanks and drain fields, such Plan shall illustrate the location of all septic tanks and drain fields. The applicant shall submit proof that the proposed septic tank and drain

field location for each lot would be approved, or has been approved, by the Berrien County Health Department.

- g. The location of all portions of the land that are unbuildable for residential purposes due to the presence of wetlands, slopes in excess of 25%, flood plains, or other features prohibiting development for residential purposes.

- (1) When reviewing an application submitted under the terms of this Section, the Planning Commission shall determine whether the Parallel Plan accurately reflects the number of dwelling units that could be developed on the land under its existing zoning. If the Planning Commission determines that the number of dwellings illustrated on the Parallel Plan exceeds the number of dwellings that could be permitted on the land if it were developed under its existing zoning, the applicant shall submit a revised site development plan for the clustering option reflecting the permitted number of dwellings, as determined by the Planning Commission.

- (2) A copy of the conservation easement, plat dedication, restrictive covenants, or other legal instrument that would run with the land, and would have the legal effect of preserving the open space in perpetuity in an undeveloped state. Such legal instrument shall be reviewed by the township attorney prior to recording, and shall be subject to the approval of the Planning Commission, consistent with the terms of this Section. The legal instrument shall:

- (a) Indicate the proposed permitted use(s) of the undeveloped open space.
- (b) Require that the open space be maintained in perpetuity in an undeveloped condition, without buildings, structures or other improvements, except such drainage improvements, utility lines, riding trails, hiking trails, picnic areas, park or playground equipment, agricultural structures or similar improvements that may be approved by the Planning Commission.
- (c) Require that the open space be maintained by parties who have an ownership interest in the property.
- (d) Provide standards for scheduled maintenance of the open space, including necessary pruning and harvesting of trees and new plantings.

- (3) The site development plan for the open space preservation option shall include the following minimum information, in addition to that required by Section 19.03 of this Ordinance:

- (a) Land proposed to remain in a perpetually undeveloped state and the portions of the land to be used for clustered development.
- (b) Total number of acres of land proposed to remain in a perpetually undeveloped state, the total number of acres of land proposed to be used for clustered development, and the area contained within rights-of-way or easements for streets. The percentage of each, as compared to the total site acreage, shall be indicated.

- (c) Lots and proposed building envelopes and indicate the lot area and width of each lot. The number of lots on the site development plan shall not exceed the
 - (d) number of lots on the Parallel Plan, as approved by the Planning Commission, and reduced to accommodate non-dwelling structures, if necessary, as described in Section 3.33(f)(11).
 - (e) Location and type of all proposed structures or improvements that are not dwellings.
 - (f) The applicant shall submit evidence that soil conditions are satisfactory for septic tank and drain fields.
 - (4) If the development is to be served by public streets, proof that the Berrien County Road Commission has approved the design, layout and construction of the streets
- E. If a site development plan satisfies all applicable requirements of Section 19.08 of this Ordinance, all requirements of this Section and all conditions of approval imposed by the Planning Commission pursuant to Section 19.09, the Planning Commission shall approve the site development plan. The Planning Commission may require performance guarantees, in accordance with Section 23.05
- F. Development requirements:
 - 1. Required Open Space. At least 50% of the land proposed for development under the provisions of this Section shall remain in a perpetually undeveloped state (i.e., "open space"), as provided in Section 3.33(d)(3). The following areas shall not constitute open space:
 - a. The area within all public street rights-of-way.
 - b. The area within all private street easements.
 - c. Any easement for overhead utility lines, unless adjacent to open space.
 - d. The area within a platted lot or site condominium unit.
 - e. Off street parking areas.
 - f. Detention and retention ponds.
 - g. Community drain fields.
 - h. Areas devoted to community water supply or sanitary sewer treatment systems.
 - i. Marinas.
 - j. Club houses and swimming pools.
 - 2. Standards for Open Space. The following standards shall apply to the open space required pursuant to this Section:
 - a. The open space shall not include a golf course.
 - b. The open space may include a recreational trail, picnic area, children's play area, greenway, linear park, natural area, agricultural use or other use which, as determined by the Planning Commission, is substantially similar to these uses.
 - c. The open space shall be available for all residents of the development, subject to reasonable rules and regulations and shall be reasonably usable by such residents for passive recreation such as hiking and picnicking. The open space may be, but is not required to be, dedicated to the use of the public.

- d. Open space shall be located so as to be reasonably accessible to the residents of the development. Safe and convenient pedestrian access points to the open space from the interior of the development shall be provided.
 - e. A portion of the open space shall be located along the perimeter street frontage abutting the land. The depth of this area shall be at least twenty (20) feet, not including public right-of-way, and this area shall be left in its natural condition or be landscaped to help to preserve or enhance the existing views.
 - f. Open space shall be located so as to preserve significant natural resources, natural features, scenic or wooded conditions, bodies of water, wetlands or agricultural land.
 - g. If the land contains a lake, stream or other body of water, the Planning Commission may require that a portion of the open space abut the body of water.
3. Use of Open Space. All dwelling units and other structures and improvements shall be located outside that portion of the land designated as open space. However, the Planning Commission, in its discretion, may permit structures or improvements to be located in the open space if such would be consistent with the designated purpose of the open space. By way of example only, park or playground equipment could be permitted on open space designated for recreational use, or agricultural structures could be permitted on open space designated for agricultural use. However, club houses, swimming pools, golf courses, marinas, and similar recreational amenities shall not be permitted within the designated open space.
4. Underlying- Zoning District. The development of land under this Section shall comply with all requirements of this Ordinance applicable to the zoning district in which the land is located, except those setback and lot area requirements that must be adjusted to allow the clustering option permitted herein.
5. Uniform Lot Size. Lots shall be as uniform in area as is reasonably practicable, unless otherwise approved by the Planning Commission.
6. Building Envelopes. The location and area of building envelopes, as proposed by the applicant, shall be subject to the review and approval of the Planning Commission. The location and area of building envelopes shall be established to achieve the intent and purpose of the zoning district in which the land is located.
7. Required Frontage. Each lot shall have a minimum of 50 feet of frontage measured at the street right of way or easement line. All dwelling lots shall be accessed from an interior street within the development and shall meet the minimum frontage requirement on such interior street.
8. Lot Width. Each lot shall have a minimum width equal to no less than one-half (.) the minimum lot width specified for the zoning district in which the land is located.
9. Maximum Number of Lots. The clustered portion of the development shall contain no more than the maximum number of lots, as determined from the Parallel Plan approved by the Planning Commission, and as reduced to reflect the inclusion of non-dwelling unit structures, if any, as described in Section 3.33(f)(11).
10. Non-Dwelling Unit Structures. Lots containing non-dwelling structures such as a clubhouse and its related amenities shall be subject to all requirements of this Section applicable to lots containing dwellings and shall further be subject to all other requirements of this Ordinance and other Township ordinances applicable to the type of structure proposed.
11. Reduction in Lots for Non-Dwelling Structures. If structures other than dwellings, such as a clubhouse, are constructed on a lot in the clustered portion of the land, the number of dwelling lots permitted to be developed shall be reduced as follows:

- a. The area occupied by non-dwelling structures, shall be divided by the average area of dwelling lots that could be situated in the clustered development if the non-dwelling structures were not included, based on the approved Parallel Plan. If this number is a fraction, it shall be rounded up to the nearest whole number.
 - b. The number calculated under subsection (A) shall be subtracted from the number of dwelling lots that could be permitted in the clustered development, as determined from the approved Parallel Plan.
- 12. Perimeter Lots. Notwithstanding any other provision of this Section, the Planning Commission may require that the open space preservation development be designed and constructed with lot sizes and setbacks on the perimeter that will be reasonably consistent with the lot sizes and setbacks of adjacent uses (planned or existing).
- 13. Grading. Grading within the development shall comply with the following requirements:
 - a. To preserve the natural appearance of the land, all graded areas, cuts and fills shall be kept to a minimum. Specific requirements may be placed on the area of land to be graded or to be used for building, and on the size, height, and angles of cut-and-fill slopes and the shape thereof. Retaining walls may be required.
 - b. All areas indicated as open space on the approved development plan shall be undisturbed by grading, excavating, structures or otherwise, except as permitted by the Planning Commission. Drainage improvements, utility lines, riding trails, hiking trails, picnic areas, and similar recreational improvements and amenities may be placed in open space areas if approved by the Planning Commission.
 - c. Grading within the clustered development shall be planned and carried out so as to avoid erosion, pollution, flooding or other adverse effects upon the land, and so as to have only such minimal effect upon the environmental characteristics of the land as may be reasonably feasible.
- 14. Private Streets. Private streets within a open space preservation development shall conform to the private street requirements of this Ordinance.
- 15. Other Laws. The development of land under this Section is subject to all other applicable Township ordinances, state and federal laws, rules and regulations, including, but not limited to, rules relating to suitability of groundwater for on-site water supply for land not served by a public water system, and rules relating to the suitability of soils for on-site sewage disposal for land not served by public sanitary sewers.

G. Amendments to an Approved Site Plan:

- 1. An approved open space preservation development plan and any conditions imposed upon its approval shall not be changed except upon the mutual consent of the Planning Commission and the applicant, except as otherwise stated below with respect to a minor change.
- 2. Changes to an approved development plan shall be permitted only under the following circumstances.
 - a. The holder of an approved plan shall notify the Zoning Administrator of any desired change.
 - b. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the open space development, nor any specified conditions imposed as part of the original approval. Minor changes shall include only the following:

- (1) Landscaping approved in the final development plan that is replaced by similar landscaping to an equal or greater extent;
- (2) Internal rearrangement of a Parking Lot which does not affect the number of parking spaces or alter access locations or design;
- (3) Changes required or requested by the Township, Berrien County, or other State or Federal regulatory agency in order to conform to other laws or regulations.
- (4) Change of phases or sequence of phases if all phases have been approved.

H. Time Limitation on Development:

1. Each development permitted pursuant to this Section shall be under construction within one year after the date of approval of the open space preservation plan by the Planning Commission. If this requirement is not met, the Planning Commission may, in its discretion, grant no more than one extension not exceeding one year, provided that the applicant submits reasonable evidence to the effect that unforeseen difficulties or special circumstances have been encountered, causing delay in the commencement of the clustered development.
2. If the clustered development has not been commenced within the above-stated time period, or within any authorized extension thereof, any building permits issued for the development or any part thereof shall be of no further effect. The applicant shall then be required to seek renewed approval from the Planning Commission under the terms of this Section in order to exercise the clustering option.

SECTION 3.34

DRIVEWAY STANDARDS

A. Intent & Purpose:

The intent of this section is to establish standards for driveway spacing and the number of driveways for application during the site plan review process. The standards of this section are intended to promote safe and efficient travel within the township; minimize disruptive and potentially hazardous traffic conflicts; sustain the traffic carrying capacity of the roadways in order to delay or avoid premature widening which would detract from the character of the Township; separate traffic conflict areas by reducing the number of driveways; provide efficient spacing standards between driveways, and between driveways and intersections; implement the Master Plan recommendations; protect the substantial public investment in the street system; and ensure reasonable access to properties, though not always the most direct access.

B. Applicability:

No building or structure, nor the enlargement of any building or structure, shall hereafter be erected unless the following regulations are met and maintained in connection with such building, structure, or enlargement. Should any requirement of this Section conflict with any other requirement of this Ordinance, the stricter of the requirements shall prevail.

C. Driveways

1. The following provisions shall apply to all driveways, except those serving an individual single family or two family dwelling or an essential public service use, building, or

structure. The number of driveways permitted shall be the minimum necessary to provide reasonable access for regular traffic and emergency vehicles, while preserving traffic operations and safety along the public roadway.

- a. Each lot may be permitted one (1) driveway, provided the spacing requirements of this Section can be achieved. However, shared driveways between two (2) or more contiguous properties shall be encouraged.
- b. One (1) additional driveway may be permitted on parcels with lot widths exceeding five hundred (500) feet.
- c. Additional driveways may be permitted by the Planning Commission for any site, providing the spacing and alignment criteria listed below are met, and a traffic impact study is completed which justifies an additional driveway.
- d. The Planning Commission may permit two (2) one-way driveways rather than a single dual movement driveway for particular uses where safer, more efficient circulation and function of the drives can be demonstrated.
- e. The applicant shall submit evidence indicating that the sight distance requirements of the Michigan Department of Transportation (MDOT) or Berrien County Road Commission, as appropriate, are met.

2. Spacing and alignment:

- a. Driveways shall be spaced a minimum distance from driveways on the same side of the street, centerline to centerline, based on the posted roadway speed, as follows:

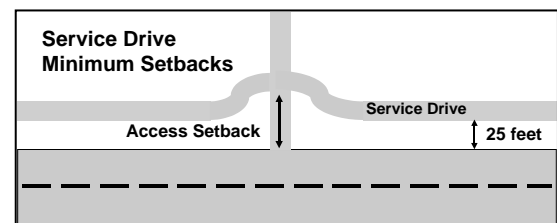
Posted Speed Limit (mph)	Minimum Driveway Spacing (feet)*	
	State Highways	County Roads
35 mph or less	245 ft.	150 ft.
40 mph	300 ft.	185 ft.
45 mph	350 ft.	230 ft.
50 mph	455 ft.	275 ft.
55 mph	455 ft.	350 ft.
* Unless greater spacing is required by MDOT or the County Road Commission		

- b. Driveways shall be aligned with driveways on the opposite side of the street or off-set a minimum of two hundred fifty (250) feet, centerline to centerline, along arterial roadways and one hundred fifty (150) along all other roads.
- c. Driveways spacing from an intersection of a private road or public street measured from near pavement edge of the street to near pavement edge of the driveway throat shall not be less than the following:

Location of Driveway	Minimum Spacing for a Full Movement Driveway*	Minimum Spacing for a Channelized Driveway Restricting Left Turns*
Along arterial** or from expressway ramps	300 ft.	300 ft.
Along arterial intersecting another arterial	250 ft.	125 ft.
Along arterial intersecting a non-arterial street	200 ft.	125 ft.
Along any non-arterial street	125 ft.	75 ft.
<p>* For sites with insufficient frontage to meet the above requirements, the Planning Commission may require construction of the driveway along a side street, a shared driveway with an adjacent property, construction of a driveway along the property line farthest from the intersection, or require a service/frontage road.</p> <p>** As designated in the Niles Charter Township Master Plan.</p>		

D. Frontage roads and service drives:

1. The **Planning Commission** shall encourage the construction of frontage roads or rear service drives along parcels to connect future or existing developments, especially in the following situations:
 - a. where the driveway spacing standards of this section cannot be met;
 - b. when the driveway could potentially interfere with traffic operations at an existing or potential traffic signal location;
 - c. the site is located along a major arterial street, particularly along segments experiencing congestion or a relatively high number of crashes (accidents);
 - d. the property frontage has limited sight distance; or
 - e. the fire department recommends a second means of emergency access.
2. Where service drives and frontage roads are constructed they shall be set back as far as reasonably possible from the intersection of the access driveway with the street.
3. A minimum of twenty-five (25) feet shall be maintained between the public street right-of-way and the pavement of the service drive.



E. Design Standards for Service Drives:

Service drives as an alternate to numerous individual driveways serving a series of uses or lots shall be designed according to the following additional standards:

1. **Location:** Service drives shall generally be parallel or perpendicular to the front property line and may be located either in front of, adjacent to, or behind principal buildings and may be placed in required yards. In considering the most appropriate alignment for a service drive, the Planning Commission shall consider the setbacks of existing and/or proposed buildings and anticipated traffic flow for the site.
2. **Access Easement:** The service drive shall be located within an easement permitting traffic circulation between properties. The easement shall be at least forty (40) feet wide.

3. Construction and Materials: Service drives shall have a base, pavement, and curb and gutter or rolled curb, in accordance with Berrien County standards, except the width of the service drive shall be at least twenty-six (26) feet.
4. Parking: No parking shall be permitted along a service drive. The Planning Commission may require the posting of “no parking” signs along such road.
5. Access: The Planning Commission shall approve the location of all access to the service drive that comply with the driveway spacing standards of this Section.
6. Temporary Access: The Planning commission may approve temporary access points where a continuous service drive is not yet available and a performance guarantee is provided to assure elimination of such temporary access when the service drive is continued.
7. Elevation: The site plan shall indicate the proposed elevation of the service drive at the property line and the Building Official shall maintain a record of all service drive elevations so their grades can be coordinated.
8. Landscaping: A greenbelt shall be provided between the service drive and the public street right-of-way.
9. Maintenance: A maintenance agreement shall be provided to the Planning Commission which specifies the means to be used for on-going maintenance of the service drive.

F. Modification of Standards:

The Planning Commission shall have the authority to modify the standards of this Section upon consideration of the following:

1. The standards of this Section would prevent reasonable access to the site.
2. Access via a shared driveway or service drive is not possible due to the presence of existing buildings or topographic conditions.
3. Roadway improvements (such as the addition of a traffic signal, a center turn lane, or a bypass lane) will be made to improve overall traffic operations prior to project completion or occupancy of the building.
4. The use involves the redesign of an existing development or a new use which will generate less traffic than the previous use.
5. The proposed location and design is supported by the Berrien County Road Commission as an acceptable design under the conditions. The Planning Commission may also require that the applicant provide a traffic impact study, prepared by a registered traffic engineer or transportation planner, to support the requested access design.
6. The modification shall be of the minimum amount necessary, but in no case shall spacing of a full access driveway be less than seventy-five (75) feet from another driveway or intersecting street, measured centerline to centerline.

CHAPTER 4

MAPPED DISTRICTS

SECTION 4.01

ZONING DISTRICTS

In order to more effectively protect and promote the general welfare and accomplish the aims and objectives of the Niles Charter Township Master Plan, the Township is divided into Zoning Districts of such number, boundaries, shape, and area that are deemed most suitable to provide for the best development of the community, while protecting the common rights and interests of all through associated regulations and restrictions. For the purposes of this Ordinance, Niles Charter Township is hereby divided into the following Zoning Districts:

AP	Agricultural Preservation District
RP	Rural Preservation District
R-1A	Low Density Single Family District
R-1B	Medium Density Residential District
R-2	High Density Residential District
R-3	Manufactured Housing Community District
OS	Office Service District
LB	Local Business District
GB	General Business District
HB	Highway Business District
I	Industrial District
WP	Wellhead Overlay Protection Zone

SECTION 4.02

ZONING MAP

The locations and boundaries of these descriptions are hereby established on a map entitled "Niles Charter Township Zoning Map" which is hereby adopted and declared to be a part of this Ordinance.

- A. Regardless of the existence of copies of the zoning map which may be made or published, the Official Zoning Map shall be located in the office of the Zoning Administrator and shall be the final authority as to the current zoning status in the Township. A record is to be kept by the Zoning Administrator of all changes made or required to be made to the Official Zoning Map.
- B. The Official Zoning Map shall be identified by the signature of the Zoning Administrator, attested to by the Township Clerk.
- C. The Official Zoning Map is to be kept up to date, accessible to the general public, and shall be the final authority as to the current Zoning District status of all land and buildings in Niles Charter Township which are subject to the provisions of this Ordinance.

SECTION 4.03

DISTRICT BOUNDARIES

Where uncertainty exists as to the boundaries of Zoning Districts as shown on the Zoning Map, the following rules shall apply:

- A. Where the boundaries are indicated as approximately following the street, alleys, or highways, the centerlines of said streets, alleys, or highways, or such lines extended shall be construed to be such boundaries.
- B. Boundaries indicated as approximately following lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as approximately following township boundary lines shall be construed as following such township lines.
- D. Boundaries indicated as approximately following railroad lines shall be construed to be the centerline of the railroad right-of-way.
- E. Boundaries indicated as approximately parallel to the centerlines of streets or highways shall be construed as being parallel thereto and at such distances there from as indicated on the official Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Official Zoning Map.
- F. Boundaries following the shoreline of stream, lake, or other body of water shall be construed to follow such shoreline, and in the event of change in the shoreline shall be construed as moving with the actual shoreline. Boundaries indicated as approximately following the centerline of streams, rivers, canals, or other bodies of water shall be construed to follow such centerlines.
- G. Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two districts, the Zoning Administrator shall determine the appropriate district boundaries. Appeals of the Zoning Administrator decision may be appealed only to the Zoning Board of Appeals.

SECTION 4.04

ZONING OF VACATED AREAS

Whenever any street, alley or other public way within the Township is vacated by official governmental action, and when the lands within the boundaries thereof attach to and become a part of lands adjoining such street, alley, or public way, such lands shall automatically be subjected to the same zoning regulations as are applicable to lands to the adjoining lands.

SECTION 4.05

ZONING OF FILLED LAND

Whenever any fill is placed in any lake or stream, after all required permits are obtained, the land thus created shall automatically and without further governmental action thenceforth acquire and be subjected to the same zoning regulations under this Ordinance for such adjoining lands. No use of the surface of any lake or stream shall be permitted for any purpose not permitted on the land from which the use emanates.

SECTION 4.06

ZONING DISTRICT CHANGES

When District boundaries hereafter become changed, any use made nonconforming by such change may be continued, subject to the provisions of this Ordinance.

SECTION 4.07**SUMMARY OF DISTRICT REGULATIONS** *(amended July 6, 2010)*

DISTRICT	LOT AREA	LOT WIDTH (in feet)	YARD SETBACKS (in feet)				HEIGHT		LOT Coverage
			Front	Rear	One Side	Total	Feet	Stories	
AP, Agricultural Preservation	See sec. 5.04	220	50	50	25 ¹	50	35	2½	20%
RP, Rural Preservation	1.5 acres	150	50 ²	40	15	30	35	2½	10
R-1A, Low Density Single Family	12,000 sq. ft. ³	80	40 ⁴	40	10	20	35	2½	25
R-1B, Medium Density Single Family	7,500 sq. ft. ⁵	60	30 ⁶	30	6	12	35	2½	30
R-2, High Density Residential	7,500 sq. ft. ⁵	90	25 ⁷	25 ⁷	6 ⁸	12	35	2½	30
R-3, Manufactured Housing Community	See Chapter 10								
OS, Office Service	20,000 sq. ft.	100	25 ⁹	25 ¹⁰	11	22	40	3	25
LB, Local Business	20,000 sq. ft.	100	25 ⁹	25 ¹⁰	11	22	35	2½	25
GB, General Business	30,000 sq. ft.	150	50 ¹¹	40 ¹⁰	11	22	35 ¹³	N/A	25
HB, Highway Business	30,000 sq. ft.	200	50 ¹¹	40 ¹⁰	11	22	40 ¹³	N/A	25
I, Industrial	2 acres	250	100 ¹²	75 ¹⁰	20	40	40	N/A	40

1. 60 ft. each side for non-residential uses
2. 75 ft. from State or Federal highways
3. 20,000 Sq. Ft in area and 100 foot width if not served by public sewer or community sewer system or public water system
4. 60 ft. from State or Federal highways
5. Min. area for two-family dwellings is 7,500 sq. ft. per unit and width of 90 ft.; min. of 2 acres for non-residential uses and 200 ft. width
6. 50 ft. from State and Federal highways
7. All uses other than two-family require 50 ft.
8. All uses other than two-family require 35 ft. on each side
9. No parking within required front setback and must be landscaped
10. Rear and/or side yards abutting Residential District must be screened per sec. 3.12
11. No parking within first 25 ft. of front setback and must be landscaped
12. No parking within first 25 ft. of front setback and must be landscaped; no loading in front yard
13. Building heights of up to 45 feet may be allowed on parcels adjoining property zoned GB or HB on all sides. On parcels adjoining the RP, R-1A, R-1B, R-2 or R-3 districts, building heights of up to 45 feet may be allowed, if one foot of additional setback on the property line(s) is provided adjoining such districts for each foot the building height exceeds 35 feet in the GB district or 40 feet in the HB district.

SECTION 4.08

SCHEDULE OF USES

This table is to be used as a general reference guide for all land uses permitted by the Niles Charter Township Zoning Ordinance. Refer to the applicable zoning district when making any land use determination.

USES	AP	RP	R-1A	R-1B	R-2	R-3	OS	LB	GB	HB	I
Accessory Buildings and Uses	P	P	P	P	P	P	P	P	P	P	P
Agricultural Labor Housing	SU										
Agriculture Production	P	P									
Airports and Landing Fields											SU
Assembly Buildings									P	P	
Banks and credit unions with drive-through facilities							SU	SU	SU	SU	
Banks and credit unions with-out drive through facilities							P	P	P	P	
Bed and Breakfast Establishments	SU	SU	SU	SU							
Business Offices							P	P	P	P	
Cemeteries	P	P	P	P	P						
Churches	SU	SU	SU	SU	SU		SU	SU	SU	SU	SU
Commercial Day Care Facility							P	SU	P	P	P
Commercial Radio, Television Towers	SU	SU							SU	SU	SU
Commercial Removal and Processing of Soil, Sand, Gravel	SU	SU									SU
Commercial Schools							P	P	P	P	P
Commercial Wireless Telecommunication Services	SU	SU							SU	SU	SU
Family Day Care Facilities	P	P	P	P	P	P					
Farms	P	P									
General Store in a building of less than 5,000 sq. ft.								P			
General Store in a building of 5,000 sq. ft or more								SU			
Golf Course and Country Clubs	SU	SU	SU	SU	SU						
Greenhouses and Nurseries, including retail operations	SU										
Greenhouses and Nurseries, not including retail operations	P	P									
Group Day Care Facilities			SU	SU	SU						
Gun Clubs, Rifle Ranges, Trap Shooting	SU	SU									
Health and Physical Fitness Clubs							P		P		

USES	AP	RP	R-1A	R-1B	R-2	R-3	OS	LB	GB	HB	I
Heating & Electrical Generating Plants											SU
Home Occupations	P	P	P	P	P	P					
Hospitals	SU	SU	SU	SU	SU		P		P		
Hotels and Motels									P	P	
Indoor Commercial Recreational and Entertainment Facilities									SU		
Industrial Plant Manufacturing											P
Junkyards and Salvage Yards											SU
Kennels	P	SU									
Manufactured Homes						P					
Medical Offices							P	P	SU		
Mini-Storage Warehouses									SU		SU
Mortuaries and Funeral Homes							SU	SU	SU		
Municipal Buildings		SU	SU	SU	SU						
Multiple Family Dwellings					P						
New Building Materials Sales and Storage									P		P
Nursing or Convalescent Homes					SU						
Office Building							P	P	P	SU	
Office and Showrooms								P	P		
Open Air Business									SU		
Outdoor Storage Ancillary									SU		SU
Parks, Playgrounds, Play Fields and Similar Open Space Recreation	SU	SU	P	P	P	P					
Personal Service Establishments, not including drive-through facilities							P	P	P		
Personal Service Establishment, including drive-through facilities, except for drive-through restaurants								SU	SU	SU	
Planned Unit Development		SU	SU	SU	SU		SU	SU	SU	SU	SU
Private Stables	P	P	SU								
Processing of Agricultural Products	SU										
Production of Forest Crops	P	P									
Production, Refining or Storage of Petroleum Products											SU
Public Buildings and Public Utility Offices		SU	SU	SU	SU		P	P	P		P
Public and Parochial Schools		SU	SU	SU	SU						
Public or Private Campgrounds		SU									

USES	AP	RP	R-1A	R-1B	R-2	R-3	OS	LB	GB	HB	I
Research and Development Facilities								P	P		P
Retail Business									P		
Restaurants, including drive-thru facilities									SU	SU	
Restaurants, not including drive-thru establishments							SU	P	P	P	SU
Riding Stables	P	SU									
Roadside Stands	P										
Sawmills	SU										SU
Sexually Oriented Business											SU
Single Family Dwellings	P	P	P	P							
Single Family-Site Condominium	SU	P	P	P							
State Licensed Residential Care Group Facilities	SU	SU	SU	SU							
State Licensed Residential Family Care Facilities	P	P	P	P	P						
Tool and Die Working Shops								SU	SU		P
Truck and Freight Terminals											SU
Two-Family Dwellings				SU	P						
Vehicle Repair									SU	SU	P
Vehicle Sales									P		
Vehicle Service Stations								SU		P	
Vehicle Service Stations, including convenience stores of less than 4,000 square feet									SU		
Vehicle Wash Establishments								SU	SU	SU	
Veterinary hospitals and clinics	SU								SU		P
Warehousing											P
Waste Treatment or Disposal Services, including incinerators											SU
Wellhead Protection District	SU										SU
Wholesale Business											P

CHAPTER 5

AP, AGRICULTURAL PRESERVATION DISTRICT

SECTION 5.01

PURPOSE

The purpose of this District is to preserve the agricultural character of lands within the Township; maintain the integrity of agricultural areas; minimize public service costs; limit areas of urban influence; preserve a maximum of open space; and lessen conflicts between farm and non-farm residents.

This District is intended primarily for agricultural uses and associated agricultural activities. A limited number of non-farm residences may be appropriate where land does not hold a great deal of agricultural value; will not conflict or interfere with existing agricultural operations; or where the property owner has found it desirable to sell a portion of his or her land for income or use by family members. Careful consideration will be given to environmental concerns related to groundwater quality and other related issues due to the limited ability of the Township to provide public services. All uses permitted within this District shall be conducted with due consideration for the potential effects which may result from authorized agricultural uses, in accordance with Public Act 94 of 1995, the Michigan Right to Farm Act.

SECTION 5.02

PERMITTED USES

The following uses are permitted within this District, by right:

- A. **Farms** for both general and specialized farming, together with farm dwellings and buildings and other installations useful to such farms.
- B. **Roadside stands.**
- C. Agriculture production.
- D. Production of forest crops.
- E. Greenhouses and nurseries, not including retail operations. A residence may also be located on the same property as the greenhouses and nurseries. Greenhouses or other structures accessory to the greenhouse or nursery operation shall be located no nearer than the setbacks required for accessory buildings in Section 3.08 D.
- F. **Kennels.** A residence may also be located on the same property.
- G. **State licensed residential family care facilities.**
- H. **Single family dwellings.**
- I. **Family day care facilities.**
- J. **Private stables.**
- K. **Riding stables.**
- L. Cemeteries.

- M. **Home occupations** in accordance with the requirements of Section 3.22.
- N. **Accessory buildings and uses** customarily incidental to any of the above Permitted Uses or Special Land Uses, as regulated in Section 3.08.

SECTION 5.03 SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. Land and/or buildings in the AP District allowed under **Section 5.03, B.**, shall meet the following requirements:
 - 1. The proposed use shall be sited upon lands which are less suitable for agricultural operations than other agricultural lands within the District.
 - 2. The proposed use shall be sited on a parcel in a manner which minimizes the amount of productive agricultural land which is converted to the proposed use.
 - 3. The proposed use shall be located in areas where groundwater quality and the general integrity of environmental resources; including but not limited to wetlands, floodplains, watersheds, and significant wildlife habitat and forest lands, will not be negatively affected.
- B. Land and/or buildings in the AP District may be used for the following purposes upon receiving approval by the Township Planning Commission in accordance with the provisions of Chapter 17.
 - 1. Agricultural labor housing.
 - 2. **Bed and breakfast** establishments.
 - 3. Churches.
 - 4. Golf courses and country clubs.
 - 5. Hospitals.
 - 6. Greenhouses and nurseries, including retail operations. Greenhouses or other structures accessory to the greenhouse or nursery operation shall be located no nearer than the setbacks required for accessory buildings in Section 3.08D.
 - 7. **State licensed residential care group facilities.**
 - 8. Towers and buildings for radio and television transmission and **Commercial Wireless Telecommunication Services.**
 - 9. Removal and processing of topsoil, stone, rock, sand, gravel, lime or other soil or mineral resources.
 - 10. Sawmills.
 - 11. Veterinary hospitals and clinics.
 - 12. Gun clubs, rifle ranges, trap shooting.
 - 13. Parks, playgrounds, play fields and similar open space recreation uses.
 - 14. Single family **site condominium** projects (Section 3.28), subject to Site Plan Review in accordance with the requirements of Chapter 19.
 - 15. Processing of agricultural products not grown on the property where located.

SECTION 5.04

DISTRICT REGULATIONS

- A. No building or structure, nor the enlargement of any building or structure, shall be thereafter erected unless the following yards, lot area, and building coverage requirements are provided and maintained in connection with such building or structure, or enlargement.
- B. The maximum number of lots, in addition to that of an existing principal dwelling, that may be created, shall be based on the gross area of that tract which is to be subdivided, and which constitutes the lot of record as of the date of adoption of this Ordinance as follows:

Schedule of Density Table

Maximum # of Additional Lots Permitted	
Area of Lot of Record	Number of Lots
less than 20 acres	2
20.1 to 40 acres	3
40.1 to 80 acres	4
80.1 to 160 acres	5
over 160.1 acres	6

- C. Any lot created for residential, non-agricultural purposes shall be at least one (1) acre and no greater than two (2) acres in area, unless a larger parcel is required by the Berrien County Health Department to accommodate a drainage field for a septic system or adequate separation between septic and well systems. Lots which are created shall have a minimum of two-hundred and twenty (220) feet of public or private road frontage.
- D. All lots shall be contiguous unless the Zoning Administrator determines that for reasons of public health and safety it would be in the public interest to permit the creation of noncontiguous lots.
- E. Lots which are created shall be located on lands least suitable for agricultural production. In addition, lots shall be located in areas where groundwater quality and the general integrity of environmental resources; including but not limited to wetlands, floodplains, watersheds, and significant wildlife habitat and forest lands, will not be compromised.
- F. The following development standards shall be followed for all parcels, except in instances where differences have been noted.

AP District Regulations	
Front Yard Setback	50 feet
Side Yard Setback	Residential buildings - 25 feet
	Main buildings for non-residential uses - 60 feet
Rear Yard Setback	50 feet

AP District Regulations	
Building Height	35 feet or 2 ½ stories; farm buildings/structures shall be permitted at their usual and customary heights.
Maximum Lot Coverage	20%
Minimum Lot Area	Farm dwelling: 40 acres
	Nonfarm dwelling: 1 acre
	Special land use: 2 acres, unless otherwise specified
Maximum Lot Area	Nonfarm dwelling unit: 2 acres
Minimum Lot Width	220 feet, unless otherwise specified
Minimum dwelling unit size	1,000 square feet, with a minimum of 720 square feet on the ground floor for two story dwellings

CHAPTER 6

RP - RURAL PRESERVATION DISTRICT

SECTION 6.01

PURPOSE

Through the application of this District, the Township acknowledges the need and desire for low density residential development that will afford a rural living environment for those who desire such an option. This District recognizes that much of the land in this classification may eventually be converted from farm and vacant fields to residential uses. However, there is no intent to encourage the premature conversion of such land to residential uses.

The purpose of this District is to protect the valued natural features of the community such as wood lands, wetlands, hilly terrain, water, and associated animal habitats that contribute to the rural character of much of the Township, while allowing low density residential development to occur in harmony with these features. The RP District is further intended to preserve privacy, protect ground water quality, and recognize the limited ability of the Township to provide costly services associated with higher residential densities in outlying areas.

SECTION 6.02

PERMITTED USES

The following uses are permitted within this District, by right:

- A. **Single family dwellings.**
- B. Single family **site condominium** projects (Section 3.28), subject to Site Plan Review in accordance with the requirements of Chapter 19.
- C. **Farms**, including related **accessory buildings**, and **roadside stands**.
- D. Greenhouses, orchards, and nurseries, not including retail operations.
- E. Agriculture production.
- F. Production of forest crops.
- G. **State licensed residential care family facilities.**
- H. **Family day care facilities.**
- I. Cemeteries.
- J. **Private stables.**
- K. **Home occupations**, as regulated by Section 3.22.
- L. **Accessory buildings and uses**, as regulated by Section 3.08.

**SECTION 6.03
SPECIAL LAND USES**

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. Country clubs and golf courses.
- B. Public parks, playgrounds, play fields, and similar public open space recreation uses.
- C. **Bed and breakfast establishments.**
- D. Kennels.
- E. Towers and buildings for radio and television transmission and **Commercial Wireless Telecommunication Services.**
- F. Public and parochial schools.
- G. Churches.
- H. Hospitals.
- I. **State licensed residential care group facilities.**
- J. Public or private campgrounds.
- K. Commercial removal and processing of soil, sand, gravel, or other minerals.
- L. Riding stables.
- M. Gun clubs, rifle ranges, trap shooting.
- N. Municipal buildings.
- O. Public buildings and public utility offices, not requiring outside storage of materials.
- P. **Planned Unit Development.**

**SECTION 6.04
DISTRICT REGULATIONS**

The following dimensional requirements shall be met for any use found within this District, unless provided elsewhere.

RP District Regulations	
Minimum lot area	1.5 acres
Minimum lot width	150 feet

Minimum front yard setback	75 feet from State or Federal highways 50 feet from all other roads
Minimum side yard setback	15 feet
Minimum rear yard setback	40 feet
Maximum lot coverage	10 percent
Maximum building height	2 ½ stories; or 35 feet, whichever is higher
Minimum dwelling unit size	1,000 square feet with a minimum of 720 square feet on the ground floor for two story dwellings

CHAPTER 7

R-1A LOW DENSITY SINGLE FAMILY DISTRICT

SECTION 7.01

PURPOSE

This District is intended to provide for a stable and sound family residential environment with its appropriate neighborhood related urban amenities, facilities, and services. A relatively low density urban residential pattern will be permitted through construction and occupancy of single family dwellings within concentrated developments such as plats and site condominiums.

SECTION 7.02

PERMITTED USES

The following uses are permitted within this District, by right:

- A. **Single family dwellings.**
- B. Single family **site condominium** projects (Section 3.28), subject to Site Plan Review in accordance with the requirements of Chapter 19.
- C. Public parks, playgrounds, play fields, and similar public open space recreation uses, not including campgrounds.
- D. **State licensed residential care family facilities.**
- E. **Family day care facilities.**
- F. Cemeteries.
- G. **Accessory buildings and uses**, as regulated by Section 3.08.
- H. **Home occupations**, as regulated by Section 3.22.

SECTION 7.03

SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. Public and parochial schools.
- B. Churches.
- C. Public buildings and public utility offices, not requiring outside storage of materials.
- D. **Group day care.**
- E. **Hospitals.** (Not including institutions for the mentally retarded, drug or alcohol patients, or correctional facilities.)

- F. Municipal buildings.
- G. Golf courses and country clubs.
- H. **Private stables** and keeping of **livestock**; provided the parcel is a minimum of ten (10) acres.
- I. Golf courses and country clubs.
- J. **Bed and breakfast establishments.**
- K. **State licensed residential care group facilities.**
- L. **Planned Unit Development.**

SECTION 7.04 DISTRICT REGULATIONS

The following dimensional requirements shall be met for any use in this District, unless otherwise provided.

R-1A District Regulations		
Minimum lot area	Single family dwellings	12,000sq.ft. w/public sewer, private community sewer system, or public water system 20,000 sq.ft. w/on-site septic and well systems
	Nonresidential uses	2 acres
Minimum lot width	Single family dwellings	80 feet w/public sewer or water 100 w/on-site septic and well
	Nonresidential uses	200 feet
Minimum front yard setback		60 feet on Federal or State highways 40 feet on all other roads
Minimum side yard setback	Single family dwellings	10 feet
Minimum rear yard setback		40 feet
Maximum building height		2 ½ stories; or 35 feet, whichever is higher
Maximum lot coverage		25 percent
Minimum dwelling unit size	Single family dwellings	1,100 square feet with a minimum of 900 square feet on the ground floor for two story dwellings

CHAPTER 8

R-1B MEDIUM DENSITY RESIDENTIAL DISTRICT

SECTION 8.01

PURPOSE

This District is intended to achieve the single family character and living environment provided in the R-1A District, but with a slightly higher density. In addition, **two family dwellings** may be permitted under certain circumstances. The R1-B District is applied primarily to existing neighborhoods within the Township where homes have been long-established on relatively small lots. It is not the intent of this District, however, to create a pattern of development or a quality of living that is less than any other **residential district**.

SECTION 8.02

PERMITTED USES

The following uses are permitted within this District, by right:

- A. All uses permitted by right in the R-1A, Low Density Single Family District.

SECTION 8.03

SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. All uses permitted with Special Land Use approval in the R-1A, Low Density Single Family District, except **private stables** and the keeping of **livestock**.
- B. Two family dwellings.

SECTION 8.04

DISTRICT REGULATIONS

The following dimensional requirements shall be met for any use in this District, unless otherwise provided. All lots within the R-1B District, created after the effective date of this Ordinance, shall be served by public sanitary sewer.

R-1B District Regulations		
Minimum lot area	Single family dwellings	7,500sq.ft.
	Two family dwellings	7,500sq.ft. per unit
	Nonresidential uses	2 acres
Minimum lot width	Single family dwellings	60 feet
	Two family dwellings	90 feet
	Nonresidential uses	200 feet

Minimum front yard setback		50 feet on all Federal or State highways 30 feet on all other roads
Minimum side yard setback	Single or two-family dwellings	6 feet
	Nonresidential uses	20 feet
Minimum rear yard setback		30 feet
Maximum building height		2 ½ stories; or 35 feet, whichever is higher
Maximum lot coverage		30 percent
Minimum dwelling unit size	Single family dwellings	900 square feet with a minimum of 720 square feet on the ground floor of two story dwellings
	Two family dwellings	900 square feet per unit

CHAPTER 9

R-2 HIGH DENSITY RESIDENTIAL DISTRICT

SECTION 9.01

PURPOSE

This District is intended primarily for high density multiple family and attached single family dwellings, together with certain institutional or other compatible uses under specified conditions. There is no intent to promote by these regulations, a residential district of lower quality or livability than any other residential district. It is the express purpose of these regulations to provide sites for multiple family dwelling structures of a low rise, high density character where adequate public services are available.

SECTION 9.02

PERMITTED USES

The following uses are permitted within this District, by right:

- A. **Two family dwellings.**
- B. Multiple family dwellings.
- B. Public parks, playgrounds, play fields, and similar public open space recreation uses, not including campgrounds.
- C. **State licensed residential care family facilities.**
- D. **Family day care facilities.**
- E. Cemeteries.
- F. **Accessory buildings and uses**, as regulated by Section 3.08.
- G. **Home occupations**, as regulated by Section 3.22.

SECTION 9.03

SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. Public and parochial schools.
- B. Churches.
- C. Public buildings and public utility offices, not requiring outside storage of materials.
- D. **Group day care.**
- E. **Hospitals.** (Not including institutions for the mentally retarded, drug or alcohol patients, or correctional facilities.)

- F. Nursing or convalescent homes.
- G. Municipal buildings.
- H. Golf courses and country clubs.
- I. **Planned Unit Development.**

SECTION 9.04

DISTRICT REGULATIONS

The following dimensional requirements shall be met for any use in this District, unless otherwise provided. All uses within the R-2 District, created after the effective date of this Ordinance, shall be served by public sanitary sewer.

R-2 District Regulations			
Minimum lot area	Two family dwellings	7,500sq.ft. per dwelling	
	Multiple family dwellings	2 acres, maximum density on any parcel shall not exceed 10 units per gross acre	
	Nonresidential uses	2 acres	
Minimum lot width	Two family dwellings	90 feet	
	Multiple family dwellings	100 feet	
	Nonresidential uses	200 feet	
Minimum front yard setback	Two family dwellings	25 feet	
	All other uses	50 feet	
Minimum side yard setback	Two family dwellings	6 feet	
	Multiple family dwellings and Nonresidential uses	35 feet	
Minimum rear yard setback	Two family dwellings	25 feet	
	Multiple family dwellings and Nonresidential uses	50 feet	
Maximum building height		2 ½ stories; or 35 feet, whichever is higher	
Maximum lot coverage		30 percent	
Minimum dwelling unit size	Two family dwellings	900 square feet per unit	
	Multiple family dwellings	One bedroom	650 square feet per unit
		Two bedrooms	800 square feet per unit
		Three or more bedrooms	950 square feet per unit

CHAPTER 10

R-3 MANUFACTURED HOUSING COMMUNITY DISTRICT

SECTION 10.01

PURPOSE

To provide for **manufactured housing community** development, of long-term duration of stay, in areas that are appropriate by means of traffic access and public utilities and services. Public water and sewer facilities, or a suitable alternative method shall be provided for each development. Any such development is to be located near essential community services and abutting paved **public streets**. The R-3 zoning district shall only be established in conformance with the Niles Charter Township Master Plan.

SECTION 10.02

PERMITTED USES

Land and buildings in this District may be used for the following purposes, by right:

- A. **Manufactured homes** when located within an approved **manufactured housing community**.
- B. Public parks, playgrounds, play fields, and similar public open space recreation uses, not including campgrounds.
- C. Family day care.
- D. **Accessory buildings and uses**, as regulated by Section 3.08.
- E. **Home occupations**, as regulated by Section 3.22.
- F. State licensed residential family care facilities.

SECTION 10.03

REGULATIONS

All **manufactured housing communities** shall comply with the applicable requirements of Act 419, P.A. 1976, as amended, provided further that said developments meet the standards and conditions of all other provisions as herein established.

SECTION 10.04

APPLICATION PROCEDURES

- A. **Rezoning Approval:** If the property intended to be used for a manufactured housing community is not already zoned R-3, an application for rezoning shall be filed with the Township. The application for rezoning for a **manufactured housing community** requires the approval of the **Township Board** upon recommendation from the Niles Charter Township **Planning Commission** and the Berrien County Planning Commission.
- B. **Site Plan:** Any application for the extension, alteration, or construction of a **manufactured housing community** shall include a site plan of the development indicating the proposed methods of compliance with the requirements of this Ordinance and all other applicable

regulations. Said site plan shall be in conformance with the provisions and requirements of Chapter 19 of this Ordinance.

SECTION 10.05**MANUFACTURED HOME SALES**

- A. No person desiring to rent a **dwelling unit** site shall be required, as a condition to such rental, to purchase a **manufactured home** from the owner or operator of the park, as long as the **manufactured home** intended to be located on such rented site conforms in size, style, shape, price, etc., as may be required by any reasonable rules and regulations governing the operation of the **manufactured home community**.
- B. Nothing contained in this Ordinance shall be deemed as prohibiting the sale of a **manufactured home** lot by the individual owner or his agent, or those home occupations as permitted in the Zoning Ordinance, provided such sales and occupations are permitted by the **manufactured housing community** regulations. A commercial **manufactured home** sales lot shall not be permitted in this District.

CHAPTER 11

OS, OFFICE SERVICE DISTRICT

SECTION 11.01

PURPOSE

This District is designed to accommodate office uses, together with office sales and certain personal services. It is the purpose of the Office Service District to accommodate permitted uses typically in proximity to major shopping facilities and/or freeway interchanges. The nature of modern office development provides greater compatibility for integration into the community structure, often serving as a suitable buffer or transition use between **residential** and more intense **nonresidential** uses. Therefore, this District has been established for the purpose of encouraging office and related development, but excluding general commercial activity.

SECTION 11.02

PERMITTED USES

Land and/or buildings in this District may be used for the following purposes, by right:

- A. Business offices for any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic, drafting, and office equipment.
- B. Office buildings.
- C. Medical offices, including clinics.
- D. Banks, credit unions, and similar financial institutions, not including **drive-through** facilities.
- E. **Personal service establishments** which perform services on the premises, including barber and beauty shops, photographic studios, dry cleaners, electronics repair, and similar uses, not including **drive-through** facilities.
- F. Hospitals.
- G. Commercial schools including art, business, music, dance, professional, and trade.
- H. Public buildings and public utility offices, but not including storage yards, substations, or regulator stations.
- I. **Commercial day care facility.**
- J. Health and physical fitness clubs.
- K. Accessory buildings and uses, as regulated by Section 3.08.

SECTION 11.03

SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. Banks, credit unions, and similar financial institutions with **drive-through** facilities.
- B. Restaurants, not including **drive through** facilities.
- C. Mortuaries and funeral homes.
- D. Churches.
- E. **Planned Unit Development.**

SECTION 11.04 DISTRICT REGULATIONS

- A. Off-street parking areas for uses in the OS District shall be adequately lit to ensure security and safety, and shall meet the following requirements:
 - 1. Light fixtures shall be no higher than twenty (20) feet and shall be provided with light cut-off fixtures that direct light downward. Lighting shall not be attached to **buildings** or other **structures** that permit light to be directed horizontally.
 - 2. Lighting shall not be permitted to illuminate areas not within the parking lot.
- B. Site plan review is required for all uses, as outlined in Chapter 19
- C. The following dimensional requirements shall be met for any use in this District, unless otherwise provided:

OS District Regulations		
Minimum lot area	20,000 sq.ft.	
Minimum lot width	100 feet	
Minimum front yard setback	25 feet	No parking area, except for entrance driveways, shall be located within the required front yard. The required front yard shall be landscaped.
Minimum side yard setback	11 feet on each side	Side or rear yards adjoining any lot in a Residential District shall be screened in accordance with the requirements of sec. 3.12.
Minimum rear yard setback	25 feet	
Maximum building height	3 stories; or 40 feet, whichever is higher	
Maximum lot coverage	25 percent	

CHAPTER 12

LB, LOCAL BUSINESS DISTRICT

SECTION 12.01

PURPOSE

The Local Business District is intended to provide for small, convenient commercial areas adjacent to existing or planned residential concentrations. Uses and locations considered to be appropriate for the LB District shall cater to the residents of Niles Charter Township and nearby areas, remain small enough in scale to be well integrated into a neighborhood or residential setting, and possess appropriate traffic safety components that will limit potential negative impacts resulting from a non-residential use.

SECTION 12.02

PERMITTED USES

Land and/or buildings in this District may be used for the following purposes, by right:

- A. A general store which supplies for sale as the principal goods: groceries, fruits, vegetables, meats, dairy products, baked goods, confections, and incidental items such as pharmaceuticals, dry goods, clothing, notions, books, hardware goods, and sporting goods; taking place entirely within an enclosed **buildings** of less than five thousand (5,000) square feet **GFA**.
- B. Business offices for any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic, drafting, and office equipment.
- C. Office buildings.
- D. Restaurants, not including **drive-through** facilities.
- E. Banks, credit unions, and similar financial institutions, not including **drive-through** facilities.
- F. Medical offices including clinics.
- G. **Personal service establishments** which perform services on the premises, including barber and beauty shops, photographic studios, dry cleaners, electronics repair, and similar uses, not including **drive-through** facilities.
- H. Commercial schools including art, business, music, dance, professional, and trade.
- I. Offices and showrooms of plumbers, electricians, decorators, or similar trades.
- J. Public buildings and public utility offices, but not including storage yards, substations, or regulator stations.
- K. Research and development facilities.
- L. Accessory buildings and uses, as regulated by Section 3.08.

SECTION 12.03 SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. A general store which supplies for sale as the principal goods: groceries, fruits, vegetables, meats, dairy products, baked goods, confections, and incidental items such as pharmaceuticals, dry goods, clothing, notions, books, hardware goods, and sporting goods; taking place in a **building** of five thousand (5,000) square feet **GFA** or more.
- B. **Drive-through establishments** including banks, dry cleaners, pharmacies, and similar personal services with **drive-through** service, but not including **drive-through** restaurants.
- C. Mortuaries and funeral homes.
- D. **Vehicle service stations.**
- E. **Vehicle wash establishments.**
- F. **Commercial day care facility.**
- G. Churches.
- H. Tool and die working shops.
- I. **Planned Unit Development.**

SECTION 12.04 DISTRICT REGULATIONS

- A. Off-street parking areas for uses in the LB District shall be adequately lit to ensure security and safety, and shall meet the following requirements:
 - 1. Light fixtures shall be no higher than twenty (20) feet and shall be provided with light cut-off fixtures that direct light downward. Lighting shall not be attached to **buildings** or other **structures** that permit light to be directed horizontally.
 - 2. Lighting shall not be permitted to illuminate areas not within the parking lot or other areas related to the use for which parking is intended.
- B. Site plan review is required for all uses, as outlined in Chapter 19.
- C. The following dimensional requirements shall be met for any use in this District, unless otherwise provided:

LB District Regulations (<i>amended July 6, 2010</i>)	
Minimum lot area	20,000 sq. ft.
Minimum lot width	100 feet

Minimum front yard setback	25 feet	No parking area, except for entrance driveways, shall be located within the required front yard. The required front yard shall be landscaped
Minimum side yard setback	11 feet	Side or rear yards adjoining any lot in a Residential District shall be screened in accordance with the requirements of Section 3.12.
Minimum rear yard setback	25 feet	
Maximum building height	the lesser of 2 ½ stories or 35 feet	
Maximum lot coverage	25 percent	

CHAPTER 13

GB, GENERAL BUSINESS DISTRICT

SECTION 13.01

PURPOSE

The purpose of this District is to provide for the general, community-wide commercial and service needs of the Township and surrounding area in high visibility locations abutting major traffic arteries. Permitted uses are intended to be of an appropriate scale, appearance, and arrangement to maximize compatibility with adjoining uses and minimize conflicts with traffic on adjacent streets.

SECTION 13.02

PERMITTED USES

Land and/or buildings in this District may be used for the following purposes, by right:

- A. Any retail business whose principal activity is the sale of merchandise within an enclosed building.
- B. Banks, credit unions, and similar financial institutions, not including **drive-through** facilities.
- C. Business offices for any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic, drafting, and office equipment.
- D. Office buildings.
- E. **Personal service establishments** which perform services on the premises, including barber and beauty shops, photographic studios, dry cleaners, electronics repair, and similar uses, not including **drive-through** facilities.
- F. Restaurants, clubs, or other establishments that provide food or drink for consumption on the premises, excluding **drive-through** facilities.
- G. Public buildings and public utility offices, but not including storage yards, substations, or regulator stations.
- H. Offices and showrooms of plumbers, electricians, decorators, or similar trades.
- I. New building materials sales and storage, including building trade.
- J. Assembly buildings including dance pavilions, auditoriums, churches, and private clubs.
- K. Health and physical fitness salons.
- L. **Hotels and motels.**
- M. **Hospitals.**
- N. Commercial schools including, but not limited to, dance, music, trade, or martial arts.

- O. **Commercial day care facility.**
- P. Research and development facilities.
- Q. Vehicle sales.
- R. Accessory buildings and uses, as regulated by Section 3.08.

SECTION 13.03 SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. **Drive-through establishments** including banks, dry cleaners, pharmacies, restaurants, and similar personal services with **drive-through** service.
- B. Open air businesses.
- C. Mortuaries and funeral homes.
- D. Indoor commercial recreational and entertainment facilities, such as theaters, bowling lanes, billiard parlors, and skating rinks.
- E. **Vehicle service stations**, including convenience stores of less than 4,000 sq.ft.
- F. **Vehicle repair.**
- G. **Vehicle wash establishments.**
- H. Medical offices including clinics.
- I. Churches.
- J. Veterinary hospitals and clinics.
- K. Outdoor storage or display areas ancillary to a permitted principal use.
- L. Mini-storage warehouses.
- M. Tool and die working shops.
- N. Commercial radio and television towers, and **commercial wireless telecommunication services.**
- O. **Planned Unit Development.**

SECTION 13.04 DISTRICT REGULATIONS

- A. Off-street parking areas for uses in the GB District shall be adequately lit to ensure security and safety, and shall meet the following requirements:

1. Light fixtures shall be no higher than twenty-five (25) feet and shall be provided with light cut-off fixtures that direct light downward. Lighting shall not be attached to **buildings** or other **structures** that permit light to be directed horizontally.
 2. Lighting shall not be permitted to illuminate areas not within the parking lot or other areas related to the use for which parking is intended.
- B. Site plan review is required for all uses, as outlined in Chapter 19.
- C. The following dimensional requirements shall be met for any use in this District, unless otherwise provided:

GB District Regulations <i>(amended July 6, 2010)</i>		
Minimum lot area	30,000 sq. ft.	
Minimum lot width	150 feet	
Minimum front yard setback ¹	50 feet	No parking area, except for entrance driveways, shall be located within the first twenty-five (25) feet of the required setback abutting the right-of-way. This area shall be landscaped
Minimum side yard setback ¹	11 feet	Side or rear yards adjoining any lot in a Residential District shall be screened in accordance with the requirements of Section 3.12.
Minimum rear yard setback ¹	40 feet	
Maximum building height ¹	35 feet ¹	
Maximum lot coverage	25 percent	
1. Building heights of up to 45 feet may be allowed on parcels adjoining property zoned GB or HB on all sides. On parcels adjoining the RP, R-1A, R-1B, R-2 or R-3 districts, building heights of up to 45 feet may be allowed, if one foot of additional setback is provided on the property line(s) adjoining such districts for each foot the building height exceeds 35 feet.		

CHAPTER 14

HB, HIGHWAY BUSINESS DISTRICT

SECTION 14.01

PURPOSE

This District is intended to provide appropriate and confined locations for commercial and business enterprises that primarily serve the motoring public. This District should be located adjacent to freeway interchanges which offer convenient and safe access, as well as appropriate visibility. The range of uses allowed within this District is specifically limited to prevent the creation of widespread commercial areas and inappropriate strip development patterns.

SECTION 14.02

PERMITTED USES

Land and/or buildings in this District may be used for the following purposes, by right:

- A. **Vehicle service stations.**
- B. **Hotels and motels.**
- C. Business offices.
- D. Restaurants, excluding **drive through** facilities.
- E. Banks, credit unions, and similar financial institutions, excluding **drive through facilities**.
- F. Commercial schools including art, business, music, dance, professional, and trade.
- G. **Commercial day care facility.**
- H. Assembly buildings including dance pavilions, auditoriums, churches, and private clubs.
- I. Accessory buildings and uses, as regulated by Section 3.08.

SECTION 14.03

SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. **Drive-through establishments** including banks and restaurants.
- B. Office buildings.
- C. **Vehicle repair.**
- D. **Vehicle wash establishments.**
- E. Commercial radio and television towers.

F. **Commercial Wireless Telecommunication Services.**

G. Churches.

H. **Planned Unit Developments.****SECTION 14.04****DISTRICT REGULATIONS**

A. Off-street parking areas for uses in the HB District shall be adequately lit to ensure security and safety, and shall meet the following requirements:

1. Light fixtures shall be no higher than twenty-five (25) feet and shall be provided with light cut-off fixtures that direct light downward. Lighting shall not be attached to **buildings** or other **structures** that permit light to be directed horizontally.
2. Lighting shall not be permitted to illuminate areas not within the parking lot or other areas related to the use for which parking is intended.

B. Site plan review is required for all uses, as outlined in Chapter 19.

C. The following dimensional requirements shall be met for any use in this District, unless otherwise provided:

HB District Regulations (amended July 6, 2010)		
Minimum lot area	30,000 sq. ft.	
Minimum lot width	200 feet	
Minimum front yard setback ¹	50 feet	No parking area, except for entrance driveways, shall be located within the first twenty-five (25) feet of the required setback adjacent to the right-of-way. This area shall be landscaped
Minimum side yard setback ¹	11 feet	Side or rear yards adjoining any lot in a Residential District shall be screened in accordance with the requirements of Section 3.12.
Minimum rear yard setback ¹	40 feet	
Maximum building height ¹	40 feet ¹	
Maximum lot coverage	25 percent	
1. Building heights of up to 45 feet may be allowed on parcels adjoining property zoned GB or HB on all sides. On parcels adjoining the RP, R-1A, R-1B, R-2 or R-3 districts, building heights of up to 45 feet may be allowed, if one foot of additional setback is provided on the property line(s) adjoining such districts for each foot the building height exceeds 40 feet.		

CHAPTER 15

I, INDUSTRIAL

SECTION 15.01

PURPOSE

The intent of this District is to provide appropriate locations within the Township for those intense industrial and related uses that offer employment opportunities and tax base to the community. Such locations are to be served by public services and facilities with adequate capacity. This District is specifically designed to prevent potentially negative impacts such as heavy traffic, continuous operation, odor, noise, or visual obtrusiveness from encroaching into areas or Districts where they would be incompatible.

SECTION 15.02

PERMITTED USES

Land and/or buildings in this District may be used for the following purposes, by right:

- A. Industrial plants manufacturing, compounding, processing, packaging, treating, or assembling the following:
 - 1. Agricultural products, including but not limited to, the production in greenhouses of flowers, plants, shrubs, trees, or other similar living products;
 - 2. Food and kindred products including meat, dairy, fruit, vegetable, seafood, bakery, confectionery, beverage, and similar products (but not including slaughtering of animals, or rendering or refining of fats or oils);
 - 3. Electrical machinery, equipment and supplies, electronic components and accessories; and
 - 4. Engineering, measuring, optical, medical, scientific, photographic, and similar instruments and goods.
- B. Industrial plants manufacturing, compounding, processing, packaging, treating, or assembling materials or products from previously prepared materials including the following:
 - 1. Textile mill products, including woven fabric, knit goods, dyeing and finishing, floor coverings, yarn and thread, and other similar products;
 - 2. Apparel and other finished products including clothing, leather goods, and canvas products;
 - 3. Lumber and wood products including mill work, prefabricated structural work products and containers;
 - 4. Paper and paperboard containers and products;
 - 5. Pharmaceutical products, drugs, medicinal chemicals and pharmaceutical preparations;
 - 6. Glass products;
 - 7. Jewelry, silverware and plated ware;
 - 8. Musical instruments and parts;
 - 9. Toys, amusements, sporting, and athletic goods;
 - 10. Pens, pencils, and other office and artist supplies and materials;
 - 11. Signs and advertising displays;
 - 12. Pottery and figurines and other ceramic products using only previously pulverized clay; and

- 13. Fabricated metal products, except the production of heavy machinery and transportation equipment.
- 14. Tool and die metal working shops.
- C. Wholesale businesses, including automotive equipment , drugs, chemicals, dry goods, apparel, food, farm products, electrical goods, hardware, machinery, equipment, metals, paper products, and lumber.
- D. Warehousing, including refrigerated and general storage.
- E. Veterinary hospitals and clinics.
- F. Vehicle repair.
- G. Commercial schools including art, business, music, dance, professional, and trade.
- H. **Commercial day care facility.**
- I. Research and development facilities.
- J. New building materials sales and storage, including building trade.
- K. Public buildings and public utility offices.
- L. **Accessory buildings and uses**, as defined in Section 3.08.

SECTION 15.03

SPECIAL LAND USES

The following uses are permitted in this District by obtaining approval from the **Planning Commission** as a Special Land Use after all applicable standards of Chapter 17, are satisfied.

- A. Truck and freight terminals, with or without maintenance facilities.
- B. Junkyards and salvage yards.
- C. Restaurants, not including **drive-through** establishments.
- D. Sawmills.
- E. **Commercial** removal and processing of soil, sand, gravel, or other mineral resources.
- F. **Sexually oriented businesses**, as regulated in the Niles Charter Township Sexually Oriented Business Ordinance, Title VI of the Niles Charter Township Code of Ordinances.
- G. **Commercial wireless telecommunication services.**
- H. Commercial radio and television towers.
- I. Production, refining or storage of petroleum products.

- J. Waste treatment or disposal facilities, including incinerators.
- K. Outdoor storage ancillary to any use allowed in this District.
- L. Mini-storage warehouses.
- M. Heating and electric power generating plants.
- N. Airports and landing fields.
- O. Churches.
- P. **Planned Unit Development.**

SECTION 15.04

DISTRICT REGULATIONS

- A. Site plan review is required for all uses, as outlined in Chapter 19.
- B. The following dimensional requirements shall be met for any use in this District, unless otherwise provided.

I District Regulations		
Minimum lot area	2 acres	
Minimum lot width	250 feet	
Minimum front yard setback	100 feet	No parking area, except for entrance driveways, shall be located within the first twenty-five (25) feet of the required setback adjacent to the right-of-way. This area shall be landscaped. No loading areas shall be permitted in the front yard.
Minimum side yard setback	20 feet	Side or rear yards adjoining any lot in a Residential District shall be screened in accordance with the requirements of sec. 3.12.
Minimum rear yard setback	75 feet	
Maximum building height	40 feet	
Maximum lot coverage	40 percent	

- C. The accessory storage of hazardous substances shall be subject to the following provisions.
 - 1. A description of any hazardous substances expected to be used, stored or disposed of on the site shall be provided. The information shall describe the type of materials, location within the site and method of containment.
 - 2. Documentation of compliance with federal and state requirements, and a Pollution Incident Prevention Plan (PIPP) shall be submitted, as appropriate.
 - 3. Any discharge of wastewater to a storm sewer, drain, lake, stream or other surface water shall be documented and appropriate permits obtained from the Department of Environmental Quality, Surface Water Quality Division. Any discharge of liquids, sludges, wastewater and/or wastewater residuals into or onto the ground shall be

- documented and appropriate permits obtained from the Department of Environmental Quality, Waste Management Division.
4. A detailed description of any underground storage tanks and the materials to be stored shall be documented and appropriate permits obtained from the State Police Fire Marshal Division, Hazardous Materials Section.
 5. Storage of pesticide or fertilizer in quantities greater than fifty five (55) gallons or one hundred (100) pounds shall be documented and appropriate permits obtained from the Michigan Department of Agriculture, Pesticide and Plant Pest Division.

CHAPTER 16

WELLHEAD PROTECTION OVERLAY ZONE

SECTION 16.01

PURPOSE

- A. Niles Charter Township has determined that:
1. Certain groundwater underlying the Township is the source of public drinking water for existing and developing areas of the Township.
 2. Groundwater aquifers are integrally connected with the surface water, streams, drains and the St. Joseph River which constitute significant public health, recreational and economic resources of the Township and surrounding area.
 3. Spills and discharges of petroleum products, sewage and **hazardous substances** threaten the quality of the groundwater supplies and other water related resources, posing potential public health and safety hazards and threatening economic losses.
- B. Therefore, Niles Charter Township has enacted an Overlay Zone to initiate the following actions:
1. Preserve and maintain existing and potential groundwater supplies, aquifers, and groundwater recharge areas for the township water supply, and to protect them from adverse land use development or land use practices.
 2. Preserve and protect sources of drinking water supply for public health and safety.
 3. Conserve the natural resources of the Township and the surrounding area.
 4. Provide a level of protection of the financial investment that the Township has in its drinking water supply.
 5. Assure that State regulations which help protect groundwater are implemented consistently when new or expanded development proposals are reviewed.

SECTION 16.02

PERMITTED USES AND PROHIBITED USES

Permitted land uses in the Wellhead Protection Overlay Zone include all those permitted uses as allowed in the underlying zoning district, except for the following:

- A. Petroleum product manufacturing or storage.
- B. Commercial salvage yards and/or scrap processing.
- C. Oil and gas drilling.
- D. Vehicle maintenance services.
- E. Chemical and paint manufacturing operations.

- F. Laundry and dry cleaner operations.
- G. Electronic equipment manufacturing operations.
- H. Electro-plating and chemical coating operations.
- I. Other similar uses utilizing chemicals on a commercial or industrial basis.

SECTION 16.03

OVERLAY ZONE PROVISIONS

These provisions shall apply to all properties within the Wellhead Protection Overlay Zone, including private, commercial, industrial, residential and public properties, which use includes the storage or generation of **hazardous substances** in quantities greater than one hundred (100) kilograms (approximately two hundred and twenty (220) pounds or twenty-five (25) gallons) per month, and which require site plan review under provisions of this Ordinance. These Provisions apply to entire property parcels, providing that the parcel is at least partially included in the Wellhead Protection Overlay Zone.

A. Groundwater Protection Standards

1. The project and related improvements shall be designed to protect the natural environment, including lakes, ponds, streams, wetlands, floodplains and groundwater, and to ensure the absence of an impairment, pollution, and/or destruction of water, natural resources, and the public trust therein.
2. Stormwater management and drainage facilities shall be designed to retain the natural retention and storage capability of any wetland, water body, or watercourse, and shall not increase flooding, or the potential for environmental contamination, on-site or off-site, and shall not result in loss of the use of property by any third party.
3. Industrial facilities with a point source discharge of storm water shall maintain a Storm Water Pollution Prevention Plan in accordance with applicable State and Federal regulations.
4. General purpose floor drains shall be connected to a public sewer system, an on-site holding tank, or a system authorized through a State surface or groundwater discharge permit. If connected to the public sewer system then the volumes and concentrations of waste discharged to the floor drain may require compliance with Niles Charter Township pre-treatment requirements.
5. Sites that at any time use, store or generate substances in quantities greater than one hundred (100) kilograms per month that include **hazardous substances** shall be designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers or wetlands.
6. State and Federal agency requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of **hazardous substances** and polluting materials shall be met. No discharges to groundwater, including direct and indirect discharges, shall be allowed without applicable permits and approvals.

7. Bulk storage of pesticides shall be in accordance with applicable County, State and Federal regulations.
- B. Aboveground Storage and Use Areas for **Hazardous Substances**
1. Primary containment of **hazardous substances** shall be product tight.
 2. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released substance. Products held in containers with a volume of less than forty (40) gallons and packaged for retail use shall be exempt from this item.
 3. Outdoor storage of **hazardous substances** shall be prohibited except in product-tight containers which are protected from weather, leakage, accidental damage and vandalism, including an allowance of the expected accumulation of precipitation.
 4. Accessory buildings, storage rooms, sheds and pole barns which are utilized as secondary containment shall not have floor drains which outlet to soil, public sewer system, groundwater, or nearby drains or natural water bodies unless a surface or groundwater discharge permit has been obtained pursuant to applicable County, State and Federal regulation.
 5. Areas and facilities for loading and unloading of **hazardous substances** as well as areas where such materials are handled and stored, shall be designed and constructed to prevent unpermitted discharges to floor drains, rivers, lakes, wetlands, groundwater, or soils.
- C. Underground Storage Tank Systems
1. Existing and new underground storage tanks shall be registered with the authorized State agency in accordance with applicable requirements of the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality.
 2. Installation, operation, maintenance, closure, and removal of underground storage tanks shall be in accordance with applicable requirements of the Michigan Department of Environmental Quality (MDEQ). Leak detection, secondary containment, corrosion protection, spill prevention and overfill protection requirements shall be met.
- D. Well Abandonment
1. Out of service wells shall be sealed and abandoned in accordance with applicable State requirements.
- E. Well Construction
1. Well drilling, construction and installation shall only be performed by State of Michigan Registered Well Drillers.
 2. Well construction shall be completed in accordance with Part 127 of Act 368 of the Public Acts of 1978, as amended, and rules.

3. Well construction shall include fully grouting the entire length of the well casing in accordance with Part 127 of Act 368 of the Public Acts of 1978, as amended, and rules.

F. Sites With Contaminated Soils and/or Groundwater

1. Site plans shall take into consideration the location and extent of any contaminated soils and/or groundwater on the site, and the need to protect public health and environment.
2. Information must be provided regarding the type, concentration and extent of identified contamination, land use deed restrictions and any remedial action plans.
3. Excavation, drilling, direct-push and other earth penetration shall be sealed with grout, or with soil material exhibiting lower hydraulic permeability than the native soil.

G. Construction Standards

1. The general contractor, or if none, the property owner, shall be responsible for assuring that each contractor or subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for handling any **hazardous substances**. For instance, handling **hazardous substances** in proximity to water bodies or wetlands may be improper.
2. **Hazardous substances** stored on the construction site during the construction process, shall be stored in a location and manner designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers, or wetlands. Any storage container volume of over forty (40) gallons that contains **hazardous substances** shall have secondary containment.
3. If the contractor will be storing or handling **hazardous substances** that require a Material Safety Data Sheet (MSDS), the contractor shall familiarize him/herself with the sheet, and shall be familiar with procedures required to contain and clean up any releases of the **hazardous substance**.
4. Upon completion of construction, all **hazardous substances** and containment systems no longer used, or not needed in the operation of the facility shall be removed from the construction site by the responsible contractor, and shall be disposed of, recycled, or re-used in a proper manner as prescribed by applicable State and Federal Regulations.
5. Excavation, drilling, direct-push and other earth penetration shall be sealed with grout, or with soil material exhibiting lower hydraulic permeability than the native soil.

H. Maintenance

1. In areas where **hazardous substances** are handled, structural integrity of the building must be maintained to avoid inadvertent discharge of chemicals to soil and groundwater. Cracks and holes in floors, foundations and walls must be repaired in areas where **hazardous substances** are handled or stored.

I. Exclusions

1. A limited exclusion from the Provisions of Section 16.03 is hereby authorized for **hazardous substances** as follows:
 - a. The **hazardous substance** is packaged for personal or household use or is present in the same form and concentration as a product packaged for use by the general public.
 - b. The total excluded substances containing **hazardous substances** may not exceed fifty (50) gallons or four hundred (400) pounds at any time.
2. A limited exclusion from the Provisions of Section 16.03 is hereby authorized for non-routine maintenance or repair of property in the Wellhead Protection Overlay Zone provided the uses are limited as follows:
 - a. The aggregate of **hazardous substances** may not exceed fifty (50) gallons or four hundred (400) pounds at any time.
 - b. The total use of substances containing **hazardous substances** may not exceed one-hundred (100) gallons or eight hundred (800) pounds at any time.

SECTION 16.04 DISTRICT REGULATIONS

In addition to the requirements of Chapter 19 Site Plan Review, the following information shall be provided on a site plan submitted for review to the Township:

- A. The location and size of interior and exterior area(s) and structure(s) to be used for on-site storage, use, loading/unloading, recycling, or disposal of **hazardous substances**.
- B. The location of all underground and above ground storage tanks for such uses as fuel storage, waste oil holding tanks, **hazardous substance** storage, collection of contaminated stormwater or wash water, and all similar uses.
- C. The location of existing and proposed wells.
- D. The location of exterior drains, dry wells, catch basins, retention/detention areas, sumps, and other facilities designed to collect, store or transport stormwater or wastewater. The point of discharge for all drains and pipes shall be specified on the site plan.
- E. The areas on the site that the applicant has reason to believe are contaminated, together with a report on the status of any site remedial action plan and land use deed restrictions, if applicable.

SECTION 16.05 EXEMPTIONS AND WAIVERS

The transportation of any **hazardous substance** shall be exempt from the provisions of this Ordinance provided the transporting motor vehicle or rail is in continuous transit, or that it is transporting substances to or from a State licensed hazardous waste treatment, storage, or disposal facility.

CHAPTER 17

SPECIAL LAND USES

SECTION 17.01

SCOPE

This Chapter provides a set of procedures and standards for uses of land or **structures** which, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and the community as a whole. The regulations and standards herein are designed to allow practical latitude for the applicant and at the same time, maintain adequate provision for the protection of the health, safety, convenience, and general welfare of the residents of Niles Township. For purposes of this Ordinance, all Special Land Uses within the various districts are subject to the conditions and standards of this Chapter. In addition, individual uses shall conform to the specific standards cited in Section 17.04, or Chapter 18, as applicable. (*amended July 6, 2010*)

SECTION 17.02

APPLICATION AND REVIEW PROCEDURES

- A. An application shall be submitted to and reviewed by the **Zoning Administrator** for completeness. Each application shall be accompanied by:
 - 1. The payment of a fee as established by the **Township Board**;
 - 2. A completed application form, as provided by the **Township**; and
 - 3. Site plans as specified in Chapter 19.
- B. Applications for a Special Land Use shall be submitted at least thirty (30) days prior to the next regular **Planning Commission** meeting.
- C. The complete application, along with the required site plans, shall be forwarded to the **Planning Commission**. Incomplete applications or plans will be returned to the applicant and will not be forwarded to the Planning Commission.
- D. The **Planning Commission** shall hold a public hearing on the application.
- E. Notice of the public hearing shall be given as follows:
 - 1. Notice shall be published in a newspaper which circulates in the community.
 - 2. The notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within three-hundred (300) feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the property, regardless of whether the property or occupant is located in the zoning jurisdiction. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or other area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit shall receive a notice. If a single structure contains more than one (1) area owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure. This notice should request that the owner post the notice at the primary entrance to the structure.

3. The notice must be given not less than fifteen (15) days before the date the application will be considered by the **Planning Commission**.
4. The notice shall:
 - a. Describe the nature of the Special Land Use request.
 - b. Indicate the property which is the subject of the request and shall include a listing of all street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 - c. State when and where the request will be considered.
 - d. Indicate where and when written comments will be received concerning the request.
- F. The **Planning Commission** shall then review the application and other information available to it through the public hearing, or from any other sources, including recommendations or reports from the **Township** planner, engineer, fire department, or other agencies or professionals. The **Planning Commission** shall approve, approve with conditions, or deny the request, and incorporate, as part of its motion, the basis for the decision and any conditions which will be imposed.
- G. No Special Land Use application which has been denied shall be resubmitted for a period of one (1) year from the date of disapproval. The **Planning Commission** may choose to hear the request prior to the one (1) year period if new and significant facts or conditions are presented which could alter its decision.
- H. An approved Special Land Use shall be under construction within one (1) year of such approval, except as noted below:
 - a. The **Planning Commission** may grant one (1), six (6) month extension of the one (1) year time period, provided the applicant requests the extension prior to the expiration date of the Special Land Use approval.
 - b. The extension shall be approved if the applicant presents reasonable evidence to the effect that said development has encountered unforeseen difficulties beyond the control of the applicant, and the project will proceed within the extension period.
 - c. If neither of the above provisions are fulfilled or the six (6) month extension has expired prior to the start of construction, the Special Land Use approval shall be null and void.
 - d. The **Planning Commission** shall have the authority to revoke any Special Land Use approval after it has been shown that the holder of the approval has failed to comply with any of the applicable requirements of this Chapter, other applicable sections of this Ordinance, or conditions of the Special Land Use approval. Prior to any action, the **Planning Commission** shall conduct a public hearing following the notification procedures for the original approval.

SECTION 17.03

GENERAL STANDARDS

- A. In addition to the standards established for specific Special Land Uses in Section 17.04, an application for a Special Land Use approval shall satisfy the following general review standards which are basic to all Special Land Uses. The Special Land Use shall:

1. The proposed use is one listed as a Special Land Use for that district in which said use is proposed to be located.
 2. All special requirements for the proposed Special Land Use, if any, and all standards of the district, if any, in which the Special Land Use is to be located must be fulfilled or met.
 3. The Special Land Use must be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
 4. The Special Land Use shall not inappropriately change the essential character of the surrounding area.
 5. The Special Land Use shall not interfere with the general enjoyment of adjacent property owners, inhabitants, and guests.
 6. The Special Land Use shall represent an improvement in, or to the use or character of the property under consideration, and the surrounding area in general, while also maintaining as closely as possible the natural environment of the site.
 7. The Special Land Use shall not be hazardous to adjacent property, nor shall it involve uses, activities, materials or equipment which will be detrimental to the health, safety, or welfare of persons or property through the excessive production of traffic, noise, smoke, odor, fumes or glare.
 8. The Special Land Use shall be adequately served by essential public facilities and services, or, in the alternative, it must be demonstrated that the person responsible for the proposed Special Land Use will be able to continually provide adequately for the services and facilities deemed essential to the Special Land Use under consideration.
 9. The Special Land Use shall not place demands on public services and facilities in excess of available capacity.
 10. The Special Land Use shall be consistent with the intent and purpose of this Ordinance and with the objectives of the Niles Charter Township Master Plan.
 11. The proposed Special Land Use shall be in compliance with all other Township, County, State, and Federal ordinances, laws, rules, and regulations.
- B. The review standards for site plan review, as stated in Section 19.08, shall also be considered by the **Planning Commission**.
- C. Conditions of Approval:
1. The **Planning Commission** may stipulate additional conditions and safeguards deemed necessary to accomplish the following purposes.
 2. Failure to comply with such conditions may result in the revocation of the Special Land Use approval, pursuant to Section 17.02G.4.
 3. Conditions imposed shall be those necessary to:
 - a. Meet the intent and purpose of the Zoning Ordinance;
 - b. Relate to the standards established in the Ordinance for the land use or activity under consideration;
 - c. Insure compliance with those standards;
 - d. Protect the general welfare; and
 - e. Protect individual property rights.

SECTION 17.04
SPECIAL LAND USE SPECIFIC REQUIREMENTS

The specific and detailed requirements set forth in this Section relate to particular uses, and are requirements which must be met by those uses in addition to the foregoing general standards and requirements.

A. Bed and breakfast establishments.

1. The establishment shall be serviced by water and sanitary sewer services approved by the Berrien County Health Department.
2. The uses shall only be established in a detached **single family dwelling**.
3. Parking shall be located to minimize negative impacts on adjacent properties.
4. The **lot** on which the establishment is located shall meet the minimum **lot** size requirements of the **zone district**.
5. The total number of guest rooms in the establishment shall not exceed six (6).
6. Exterior refuse storage facilities beyond what might normally be expected for a detached **single family dwelling** shall be screened from view on all sides by a six (6) foot solid, decorative fence or wall.
7. One (1) sign shall be allowed for identification purposes. The sign shall not exceed sixteen (16) square feet in area, and may not exceed four (4) feet in height. If illuminated, the illumination shall only be of an indirect nature; internally lighted signs are not permitted. The sign shall be set back at least one-half (½) of the **front yard setback** area of the **zoning district** in which the use is located, and shall be located at least fifteen (15) feet from any **side** or **rear lot line**.
8. The establishment shall contain the principal residence of the operator.
9. Accessory retail or service uses, including but not limited to gift shops, antique shops, bakeries, and other similar uses shall be prohibited.
10. Meals may be served only to the operator's family, employees, and overnight guests.

B. Churches.

1. The proposed site shall abut and have direct access to a major or minor arterial road, as classified in the Niles Charter Township Master Plan. All ingress and egress shall be from said **street**.
2. Minimum **lot area** shall be two (2) acres; plus an additional fifteen thousand (15,000) square feet for each one hundred (100) seating capacity or fraction thereof in excess of one hundred (100).
3. Parking shall not be permitted within any **required yard**.
4. Outside activities shall not take place within fifty (50) feet of any property line abutting a **Residential District**.
5. A greenbelt shall be provided in accordance with Section 3.12, where, in the opinion of the **Planning Commission**, screening is required to minimize visual, noise, or other effects from the proposed use or parking area.

C. Commercial day care facilities.

1. Minimum **lot area** of two (2) acres shall be required for the use.
2. Playground equipment may only be located in the interior **side** or **rear yard** of the **lot**, and must have a five (5) foot fence around its border. The playground must be at least fifty (50) feet from the **lot line**.
3. The off-**street** parking shall be arranged so the client loading and unloading area will not be in the path of vehicular traffic.
4. The required off-**street** parking shall meet the conditions outlined in Chapter 20, for elementary schools.
5. The **main building** shall be one hundred (100) feet from any **lot line**.
6. The proposed site shall front upon a paved **public street**. All ingress and egress shall be from said **street**.

D. Commercial recreation including mini-golf, driving ranges, bowling lanes, theaters, indoor skating rinks, billiard parlors, or similar uses.

1. The proposed site shall front upon a paved **public street**. All ingress and egress shall be from that street.
2. Any **lot** line abutting a **Residential District** shall provide a fifty (50) foot wide greenbelt in accordance with Section 3.12C, D & E.
3. The **main** and **accessory buildings** and **structures** shall not be located within one-hundred (100) feet of any **Residential District** boundary.
4. Golf driving ranges shall be sufficient in size to retain balls within the site by means of landscaping, a berm or a six (6) foot high fence. Netting shall be prohibited unless the **Planning Commission** determines that it would be compatible with surrounding uses.

E. Commercial removal and processing of soil, sand, gravel, or other mineral resources.

In recognition that certain valuable natural resources may exist in the Township which can only be used if extracted from the earth; and recognizing that mineral extraction, by its nature, can present very serious consequences that can be devastating to the environment, the value of property in the community, the health and safety of the people, and the general public welfare; earth removal, quarrying, gravel processing, mining and related mineral extraction businesses and uses are only permitted in the Township, where the applicant can demonstrate that the value to the public generally of removal of the natural resources substantially outweighs the negative impact of the proposed use upon the public health, safety and welfare. In evaluating a request for approval of such a use in accordance with this Ordinance, the Planning Commission shall balance all the evidence and information submitted to it by the applicant and by others at or before the required public hearing. Prior to issuing a special use permit, the Commission shall be satisfied the following conditions and limitations are, or shall be, strictly complied with in addition to any other requirements of this or other Township ordinance controlling such operations.

1. Location:

- a. All such operation shall be located near a primary road, as defined by the Berrien County Road Commission, for ingress and egress thereto; and on a road which if used as the access to the proposed operation will not result in significant increase in truck traffic through an area developed primarily for residential purposes. Where necessary, the Commission may require the applicant to construct and/or improve a road to accommodate the truck traffic created by the operations as a

condition of the permit, and for the purpose of routing traffic around residential areas and preventing the breaking up of existing roads, that may not be “all weather” roads.

- b. Sufficient setbacks of mining, excavation and extraction activities shall be provided from all property lines and public highways to assure adequate lateral support for adjacent public and private property. No excavation operations shall be permitted closer than 150 feet from interior boundary lines of the property. Larger setbacks may be required by the Planning Commission to adequately protect adjoining properties. However, if the adjoining property is also used for mining and excavation operations, then the Planning Commission may reduce or eliminate the required setback from the interior boundary line. Such required setback may be temporarily reduced to fifty (50) feet by the Planning Commission; if reclamation of the land is promptly effected to increase the setback to at least one hundred fifty (150) feet in accordance with the reclamation plan approved by the Commission, and adequate lateral support as set forth is at all times maintained. However, any temporary reduction in a required setback shall be conditioned upon specific written assurances by the applicant detailing the date(s) such reduced setback shall occur and the date by which reclamation to increase the setback to one hundred fifty (150) feet shall be completed. Failure of the applicant to comply with said written assurances shall be grounds for revocation of the temporary setback reduction permit and for revocation of the special use permit in its entirety.
- c. No such excavation operation shall be permitted within fifty (50) feet of the adjoining public rights-of-way except for the lowering of land adjoining said rights-of-way to the grade level of said rights-of-way. Such excavation businesses shall at no time be permitted where adequate lateral support for the maintenance of adjoining lands is not maintained.
- d. Any processing plant and its accessory structures and digging or excavating apparatus, and areas where stockpiling and loading of materials occurs, shall be located no closer than two hundred fifty (250) feet from the interior property lines and adjoining public rights-of-way and shall, where practicable, be located at a lower level than the surrounding terrain to lessen visual and noise impact. All areas used for parking or storage of equipment shall also comply with this requirement.
- e. No excavation or processing operation shall be located within one hundred (100) feet of the banks of any stream or waterway unless previously approved, in writing, by the Michigan Water Resources Commission or such other state agency having jurisdiction thereof. No such mining, excavation, processing, or related operations shall interfere with the natural established flow of surface waters to the detriment or damage of adjoining public or private properties.

2. Sight Barriers:

- a. Sight barriers shall be provided along all boundaries of the site which lack natural screening conditions. Such barriers shall consist of one or more of the following:
 - (1) earth berms constructed to a height of six (6) feet above the mean elevation of the centerline of the adjacent public road; or six (6) feet above the general level of terrain along interior property lines, as the case may be. Such berms shall have slopes that are not in excess of one (1)

foot vertical to four (4) feet horizontal and shall be planted with grass, trees, and/or shrubs.

- (2) plantings of evergreen trees or shrubbery in rows parallel to the boundaries of the property not less than four (4) feet in height at the time of planting and which grow to not less than six (6) feet in height at maturity. The trees and shrubbery shall be spaced to provide effective sight barriers.
- (3) masonry walls or attractive solid fences made of uniform new materials constructed to a height of not less than six (6) feet and maintained in good repair.

3. Nuisance Abatement:

- a. Noise generated shall not exceed eighty (80) decibels at the property line. Vibration shall be minimized in its effect upon adjacent properties by the utilization of modern equipment designed and maintained to accomplish such minimization and by the proper use of berms, walls, and natural planting screens. All equipment shall be located, maintained and operated in such a manner so as to eliminate, as far as practicable, noise and vibrations which are discernable outside the boundaries of the property.
- b. Air pollution in the form of dust and dirt shall be kept to a minimum by the use of equipment and methods of operation which avoid any excessive dust or dirt or other air pollution injurious or substantially annoying to adjoining property owners. Interior and adjoining roads used in the operations shall have their surface treated to minimize any such nuisance.
- c. Hours – The operation shall be restricted to the hours of 7:00 a.m., until 7:00 p.m. and no operations shall be allowed on Sundays or legal holidays. The Planning Commission may require shorter hours of operation of certain activities such as hauling or processing where the proposed use is to be located in or near an area where residential uses exist because of the very serious consequences that noise, dust, and traffic have upon residential uses.
- d. Traffic – The operation shall be managed and controlled so that truck traffic and heavy equipment generated by the use is controlled by the permit holder and haul routes to and from the site shall be approved by the Planning Commission.
- e. Fencing – All dangerous excavations, pits, pond areas, banks or slopes shall be fenced and posted with signs around the perimeter thereof and maintained to prevent injury to children or others, and shall be eliminated as expeditiously as possible.
- f. Security – The Planning Commission may require on-site security provisions to be provided to protect the site and adjoining areas from danger of unauthorized entry or operations. However, no on-site security shall be permitted which has the effect of creating a condition of noise or glare of lights.
- g. Maximum Area – Mining, excavating and extraction of minerals shall be limited to an area of five (5) acres or less at all times. No expansion of the area of mining, excavation or extraction shall occur until reclamation and rehabilitation of previously mined areas have been completed in conformity to the approved site plan, so as to limit the area actively being used plus the area where mining has occurred but which has not yet been fully reclaimed and rehabilitated to no more than five (5) acres in total, at any time.

- h. Prior to receiving approval of any special use permit, the applicant shall submit, in addition to all other information required by this Chapter, a detailed plan for review by the Planning Commission showing the proposed end use and a specific schedule for extraction, processing and reclamation activities. The proposed plan shall be reviewed annually by the Planning Commission for comparison of actual progress to the applicant's proposed schedule.
 - i. The Township Zoning Administrator shall be authorized to enter the subject property at any time during the permitted hours of operation for the purpose of inspecting the operations for compliance with the requirements of the special use permit and this Ordinance.
- 4. Reclamation of Mined Areas:
 - a. Reclamation and rehabilitation of mined areas shall be accomplished following the mining or excavation of an area. Rehabilitation and reclamation shall be commenced immediately upon the termination of the mining or excavation operations in any area consisting of one (1) acre or more. Substantial completion of reclamation and rehabilitation shall be effected within one (1) year after termination of mining or excavation activity.
 - b. The following standards shall control reclamation and rehabilitation:
 - (1) all excavation shall be either to a water-producing depth of not less than five (5) feet below the average summer level of water in the excavation, or shall be graded or back-filled with clean gravel, fill dirt, or recycled concrete of particles less than two (2) inches in diameter. Other non-noxious, non-flammable, and non-combustible solids may be used only with the express written permission of the Niles Charter Township Planning Commission, to ensure that:
 - (a) the excavated area shall not collect stagnant water and not permit the same to remain therein; or
 - (b) the surface of such area which is not permanently submerged is graded or back-filled as necessary to produce a gently rolling surface that will minimize wind and water erosion and which will be generally compatible with the adjoining land area.
 - (2) the banks of all excavations shall be sloped to the waterline in a water producing excavation and to the pit floor in a dry operation, at a slope which shall not be steeper than one (1) foot vertical to four (4) feet horizontal.
 - (3) top soil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water , except where streets, beaches, or other planned improvements are to be completed within a one (1) year period. Where used, topsoil shall be applied to a minimum depth of four (4) inches sufficient to support vegetation.
 - (4) vegetation shall be restored by the appropriate seeding of grasses and/or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface and to minimize erosion.
 - (5) upon cessation of mining operations by abandonment or otherwise, the operating company, within a reasonable time period (not to exceed 12 months), shall remove all plant structures, foundations, buildings,

stockpiles and equipment; provided that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning district in which they will be located under such plan, may be retained.

- c. A financial guarantee, in a form approved by the Township Board, shall be furnished to the Township Clerk, prior to commencing any operations, to ensure the rehabilitation and reclamation of the subject site in accordance with the approved plan and conditions of the special use permit. The amount of such guarantee shall be no less than \$10,000 per acre for each acre proposed to be mined or excavated in the following twelve (12) months, plus \$10,000 per acre for each acre previously mined or excavated but not yet restored in accordance with the approved plan and conditions of the special use permit. Mined areas resulting in a water depth of five (5) feet or more shall be deemed to be reclaimed areas to within fifteen (15) feet of any vertical shoreline thereof and to the extent of the shoreline, where the same has been sloped to a grade, as required by this Chapter. The financial guarantee shall be reviewed by the Zoning Administrator annually, on or about the anniversary date of the permit, for adjustment and compliance with the foregoing requirements. In no event, shall such financial guarantee be less than \$10,000.

5. Submission of Operational Plans:

- a. No earth removal, quarrying, gravel processing, mining and related mineral extraction businesses shall be allowed or commenced until a plan has been submitted to the Planning Commission disclosing compliance with all of the provisions of this Ordinance or the manner in which compliance will be secured by the applicant. Such plans shall include, in addition to the requirements of Section 17.02 A, the following:
 - (1) a contour map of the tract of land involved in the operations, including dimensions of the same, access thereto, abutting public roads, whether such roads are designated "all weather" roads, additional roads to be constructed, and the location and nature of proposed improvements on adjoining property.
 - (2) the number of acres and the location of the phases to be undertaken within the following twelve (12) month period after commencement of operations.
 - (3) the type of mining or processing proposed to be conducted and the nature of the equipment to be used. Specific information shall be provided concerning the applicant's plan for controlling traffic, hours of operation, noise, pollution, drainage, and security.
 - (4) the location of the principal processing plant and the distance of any proposed excavation or mining from the boundaries of the site; and the location and layout of loading areas and parking areas proposed to be used for storage.
 - (5) soil boring tests shall be made around the perimeter of the excavation site in the event excavation or activities are to be conducted closer than one hundred fifty (150) feet from any boundary of the site. Said soil boring tests shall disclose conditions satisfactory for lateral support of adjacent premises as determined by the Township engineer. The written consent

of the owners of adjoining property and Planning Commission approval shall be required if mining operations shall be located closer to the site boundaries than specified within the Ordinance.

- (6) a map or plan disclosing the final grades and elevations to be established following the completion of the mining operation, including the proposed uses contemplated for the land, future lakes and roads and such other matters as may evidence the bona fide nature of the reclamation and rehabilitation plans, and the fact that the land will not be devastated and rendered unusable by the proposed mining activities.

6. Liability Insurance:

All operators shall be required to carry personal injury and property damage insurance in the amount of not less than \$100,000 for each person or property injured or damaged and not less than \$300,000 for injury or damage to more than one person or one person's property arising out of one occurrence. Such insurance shall cover injury or damage occurring upon the site of the operations, as well as upon properties adjoining the subject property as a result of conditions or activities existing upon the site. A copy of the policy shall be filed with the Township Clerk. The insurance required by this subsection shall be continuously in force until all areas within the subject property to which the special use permit applies have been fully reclaimed or rehabilitated in conformity with the reclamation plan.

7. Administration and Enforcement:

- a. In addition to the general standards of Section 17.03 of this Ordinance, the following specific standards shall also be considered by the Planning Commission as a basis for its decision regarding the special use permit request:
 - (1) the most advantageous use of the land, resources, and property;
 - (2) the character of the area in question and its peculiar suitability, if any, for particular uses;
 - (3) conservation of property, as well as natural resources, and the general and appropriate trend and character of development in the general vicinity of the subject property;
 - (4) the protection and preservation of the general health, safety, and welfare of the Township;
 - (5) the effect of the proposed use upon existing public services and facilities;
 - (6) the scarcity or value of the minerals sought to be mined as compared with the effect of the proposed operations upon the adjacent community; and
 - (7) whether or not the operations were in existence prior to the adoption of these regulations.
- b. In making its decision, the Planning Commission shall have the authority to impose such conditions and safeguards as it deems necessary to ensure compliance with the requirements and standards of this section. The Planning Commission may also impose reasonable time limits on the special use permit and provide for a periodic review of the proposed operations to ascertain compliance with the conditions and limitations. The Planning Commission is further empowered to renew or extend the special use permit where all standards and conditions are complied with and may revoke or refuse to renew the same for

noncompliance. No revocation or failure to renew or extend a permit shall release the applicant from the duty of rehabilitation and reclamation. No permit shall be revoked or not renewed until the operator has been given written notice of any violation forming the basis of such action and given at least thirty (30) days to correct the violation.

- c. The operator shall be required to pay an annual fee to cover the cost of inspections and additional meetings of the Planning Commission. Such fee shall be in accordance with the fee schedule established by the Township Board for administration of the Ordinance.

F. Mini-storage warehouses.

1. Minimum **lot area** shall be two (2) acres.
2. A residence may be permitted on the premises for security personnel or on-site operator. The residence shall conform to the minimum requirements for a **single family dwelling** in the R-1B District.
3. Parking and circulation:
 - a. One (1) parking space shall be provided for each ten (10) storage units, equally distributed throughout the storage area.
 - b. Two (2) parking spaces shall also be required for the residence of security personnel, or on-site operator employed on the premises.
 - c. One (1) parking space shall also be required for every twenty (20) storage units, up to a maximum of ten (10) spaces, to be located adjacent to the rental office, for the use of customers.
 - d. All driveways, parking, loading, storage, and vehicular circulation areas shall be hard surfaced and provided with a permanent, durable, and dustless surface and shall be graded and drained so as to dispose of all surface water on site.
4. No more than eighty percent (80%) of the site shall be covered with buildings or pavement.
5. A six (6) foot fence shall surround the property. The fence shall be aesthetically pleasing, and be made of a material approved by the **Planning Commission**, such as but not limited to, redwood, cinder block, or chain link with slats. The fence must be setback at least twenty (20) feet from the road right-of-way, and five (5) feet on the **side and rear yard**.
6. The use shall be fully screened from adjacent Residential Districts, in accordance with the requirements of Section 3.12.
7. The facility shall be lighted to insure optimal security. Any lights shall be shielded to direct light onto the use, and away from the adjacent properties.
8. No toxic, hazardous, or flammable materials may be stored in the storage units.

G. Country clubs and golf courses.

1. The site shall be so planned to provide all access directly onto or from a paved **street**.
2. All **structures** shall be at least one hundred (100) feet from any **lot line** abutting a **Residential District**.
3. The off-street parking area shall be so arranged as to provide the most safety for pedestrians, and ease of vehicular maneuvering.
4. The off-street parking area shall be at least fifty (50) feet from any **lot line** abutting a **Residential District**.

5. **Accessory uses** like pro shops, restaurants and lounges, and golf driving ranges may be permitted to serve the golf course or country club customers or members, subject to meeting parking requirements for such uses.
6. If required by the **Planning Commission**, a hydrologic impact assessment shall be provided describing the existing ground and surface water resources including, but not limited to, a description of the water table, direction of groundwater flow, recharge and discharge areas, lake levels, surface drainage, floodplains, and water quality as well as the projected impact of the proposed development on the resources, in particular impacts associated with water supply development, wastewater disposal, and storm water management.

H. Drive-through establishments, including banks, dry cleaners, pharmacies, and similar personal services with drive-through service.

1. Sufficient stacking capacity for the drive-through portion of the operation shall be provided to ensure that traffic does not extend into the public right-of-way. A minimum of three (3) stacking spaces for each service ordering station shall be provided. Stacking spaces shall be located so as not to interfere with vehicular circulation and egress from the property by vehicles not using the **drive-through** portion of the facility.
2. In addition to parking space requirements for the specific use, at least two (2) off-street parking spaces shall be provided, in close proximity to the exit of the drive-through portion of the operation, to allow for customers waiting for delivery of orders, as needed.
3. The proposed site shall front upon a paved **public street**. All ingress and egress shall be from said **street**.
4. The parking and maneuvering areas of the site shall be screened from the view of any abutting **Residential District** in accordance with the requirements of Section 3.12.
5. Outdoor speakers for the **drive through** facility shall be located in a way that minimizes sound transmission toward adjacent property.

I. Drive-through restaurants.

1. The standards for Section 17.04 H (**drive-through establishments**, including banks, dry cleaners, pharmacies, and similar personal services with drive-through service) shall also apply for “**drive-through** restaurants”; provided that a minimum of ten (10) stacking spaces shall be provided for the **drive-through** portion.
2. If the site abuts a Residential District, the Planning Commission may restrict the hours of operation of the **drive-through**.
3. The minimum front setback shall be seventy-five (75) feet. No parking area, except for entrance driveways, shall be located within the first fifty (50) feet adjacent to the right-of-way. This area shall be landscaped.
4. Trash receptacles shall be enclosed on all sides by a solid, sight-obscuring fence or wall constructed of decorative material, approved by the **Planning Commission**.

J. General stores offering goods for sale in an enclosed building of 5,000 square feet of GFA, or more.

1. The **main building** shall be set back one hundred (100) feet from any public right-of-way or **front lot line**. All other **setback** requirements shall be met as outlined for the **district**.
2. The **setback** for off-street parking areas shall be fifty (50) feet from any public right-of-way line or **front lot line**, and twenty (20) feet from any other **lot line**.
3. The site shall have frontage on and direct access to at least one (1) major or minor arterial road, as classified in the Niles Charter Township **Master Plan**.
4. The design of the site shall ensure that vehicular circulation patterns reduce conflicts between vehicles and pedestrians on-site, and the impacts of traffic generated by the retail establishment on adjacent **streets**.
5. Any delivery areas shall be located in the **rear** or interior **side yard**.
6. Outside storage of materials, merchandise, or products for sale shall not be permitted, except as may be permitted as outlined in subsection 7, below.
7. Merchandise or products for sale may be displayed in an area adjacent to the **main building**, provided the display area does not encompass more than five (5) square feet for each one (1) linear foot of wall length adjacent to said parking area. The Planning Commission may require that such display areas be screened by a decorative fence or wall and that no merchandise be located outside of such screened area.

K. Group day care.

1. The group day care shall not be located closer than 1,500 feet to any of the following:
 - a. Another licensed group day-care home.
 - b. Another adult foster care small group home or large group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.
 - c. A facility offering substance abuse treatment and rehabilitation service to 7 or more people licensed under article 6 of the public health code, 1978 PA 368, MCL 333.6101 to 333.6523.
 - d. Community correction center, resident home, halfway house, or other similar facility which houses an inmate population under the jurisdiction of the department of corrections.
2. The operator shall maintain the property consistent with the visible characteristics of the neighborhood.
3. The group day care shall not exceed 16 hours of operation during any 24-hour period. There shall be no more than two (2) clients under care between the hours of 10 p.m. and 6 a.m.
4. Signs used by the group day care shall be in accordance with Chapter 21.
5. There shall be provided, equipped and maintained, on the premises, a minimum of one hundred and fifty (150) square feet of usable outdoor recreation area for each client of the facility.
6. The outdoor recreation area shall be fenced with a decorative fence or wall, and landscaped.
7. Required off-street parking, as well as off-street pick-up and drop-off areas shall be provided.
8. The applicant shall provide evidence of the ability to comply with all applicable State licensing requirements.

L. Gun clubs, rifle ranges, and trap shooting.

1. Minimum **lot area** of forty (40) acres.
2. A minimum **setback** of two hundred and fifty (250) feet from all **lot lines** shall be established where no shooting activities shall take place.
3. Hours of operation shall not begin before 9:00 a.m., nor end later than sundown.
4. The use shall not be located any closer than one-quarter (1/4) mile from any church, school, park or similar place of public assembly.
5. Rifle and pistol ranges shall have adequate backstops.

M. Hospitals. (Not including institutions for the mentally retarded, drug or alcohol patients, or correctional facilities).

1. Minimum **lot area** shall be five (5) acres.
2. The proposed site shall front upon a major or minor arterial road, as classified in the Niles Charter Township **Master Plan**. The ingress and egress for all off-**street** parking facilities, deliveries, and emergency vehicles shall be directly from said **street** or streets.
3. Minimum **main** and **accessory building setbacks** from all **lot lines** shall be one hundred (100) feet.
4. Ambulance and emergency entrance areas shall be visually screened from view of adjacent residential uses by a **structure** or by a sight-obscuring wall or fence of six (6) feet in height.
5. No more than twenty-five percent (25%) of the gross site area shall be occupied by **buildings**, excluding parking **structures**.

N. Hotels and motels.

1. The proposed site shall front upon a major or minor arterial road, as classified in the Niles Charter Township Master Plan. All ingress and egress shall be from that **street**.

O. Junk yards.

1. Requests for a Special Land Use approval for establishment of a **salvage** or **junk yard** shall also require submission of a detailed proposal identifying the predominant type of salvage or junk to be received, the methods of separation and recycling, and ultimate destination of waste materials. The applicant shall be required to submit written materials outlining measures taken to comply with all necessary state, county, and local laws.
2. The site shall front upon and have direct access to a major or minor arterial road, as classified in the Niles Charter Township **Master Plan** to ensure safe, direct transport of salvage to and from the site.
3. No portion of the storage area shall be located within two hundred (200) feet of any **Residential District** or residential **lot line**.
4. Any outdoor storage area shall be completely enclosed by a fence or wall at least eight (8) feet in height, but no more than ten (10) feet, and constructed of a sturdy, durable material. The fence shall be sufficiently opaque to ensure that none of the stored material is visible from outside the storage area. The fence or wall shall have a minimum of two (2) non-transparent gates not exceeding forty-eight (48) feet in width providing access to the storage area for vehicles but shall not allow direct view of the storage area from adjacent properties or **streets**. Said fence or wall shall be continuously maintained in good condition and shall contain only approved signs.

5. Stored materials shall not be stacked higher than ten (10) feet, and shall be stored in a manner so as not to be visible from adjoining properties or rights-of-way. The piles shall not encompass more than seven hundred (700) square feet. A clear distance of twenty (20) feet shall be maintained between each pile.
6. The fence or wall enclosing the storage area shall meet the applicable **building setback** requirements.
7. A management office shall be provided on site. A residence may be permitted for security personnel or on-site operator.
8. Conditions within the storage area shall be controlled to minimize the hazards of fire and other threats to health and safety.
9. All portions of the storage area shall be accessible to emergency vehicles.
10. Vehicles or vehicle bodies shall be stored in rows with a minimum of twenty (20) foot continuous loop drives separating each row of vehicles.
11. All batteries shall be removed from any vehicle, and all radiator and fuel tanks shall be drained prior to the vehicle being placed in the storage **yard**. Drainage shall take place in a confined, hard surfaced area with adequate containment facilities to retain spillage. Salvaged batteries, oil, and other similar substances shall be removed and disposed of by a licensed disposal company. No fluids removed from vehicles shall be applied as a dust control method.
12. Vehicle parts shall not be stored, loaded, unloaded, or dismantled outside the fence enclosing the salvage yard.
13. Minimum site size for the facilities shall be six (6) acres.
14. In order to protect surrounding areas, the crushing of vehicles or any part thereof shall be limited to the hours of 8:00 a.m. to 6:00 p.m. No burning of vehicles is permitted at any time.
15. The **Planning Commission** may impose other conditions, such as greenbelts or landscaping, which have a reasonable relationship to the health, safety and general welfare of the Township.

P. Kennels and veterinary hospitals

1. The minimum **lot area** shall be one (1) acre for the first four (4) animals and an additional one-third (1/3) acre for each animal over the first four (4). However, there shall be no limit on the number of animals on sites of more than three (3) acres. Animals counted toward this total shall include the total capacity for overnight boarding or keeping.
2. **Buildings** wherein animals are kept, dog runs, and exercise areas shall not be located nearer than one hundred (100) feet to any adjacent occupied **dwelling** or any adjacent **building** used by the public and shall be set back at least seventy-five (75) feet from any **Residential District** boundary. Runs and exercise areas shall not be located in any **front yard** or required, **rear** or **side yard setback** area.
3. All **principal use** activities, other than outdoor dog run areas, shall be conducted within a totally enclosed **building**.

Q. Marinas

1. Storage and handling of gasoline, fuel oil, or other flammable liquids shall be in accordance with all applicable state and federal requirements.
2. No **building, structure**, dock, or parking area which is part of marina shall be located closer than fifty (50) feet to any **Residential District** boundary line.
3. Required off-street parking facilities shall not be used for the overnight storage of boats, trailers, or other vehicles.

4. On-land boat storage areas shall be fenced or screened to provide a sight-obscuring barrier consistent with the provisions of Section 3.12.

R. Mortuaries and Funeral homes.

1. Minimum **lot area** shall be two (2) acres with a minimum **lot width** of two hundred and twenty (220) feet.
2. A well designed, landscaped off-**street** vehicle assembly area shall be provided in support of funeral procession activity. This area shall not obstruct internal circulation within the required off-**street** parking area or related maneuvering space.
3. A caretaker's residence may be provided within the **main building**, meeting the **multiple family dwelling** unit size requirements of the R-2 District.
4. The proposed site shall front upon a major or minor arterial road, as classified in the Niles Charter Township **Master Plan**. All ingress and egress shall be from that **street** or streets.

S. Open air businesses.

1. Minimum **lot area** shall be two (2) acres and minimum **lot width** of two hundred (200) feet.
2. The **Planning Commission** may require a six (6) foot fence or wall to be constructed along the rear and sides of the **lot** to keep trash, paper, and other debris from blowing off the premises.
3. All **open air businesses** shall comply with all applicable Berrien County Health Department regulations regarding sanitation and general health conditions.
4. The proposed site shall front upon a major or minor arterial road, as classified in the Niles Charter Township **Master Plan**. All ingress and egress shall be from that **street** or streets.
5. The **lot** area used for parking shall be hard-surfaced. The display or storage areas shall be provided with a permanent, durable, and dustless surface, and shall be graded and drained so as to dispose of all surface water on-site.
6. No display area shall be located within the **required front yard**, nor within twenty (20) feet of any **side** or **rear lot line**.
7. All lighting shall be shielded from adjacent residential areas.
8. In the case of a plant nursery:
 - a. The storage or materials display area shall meet all the **yard setback** requirements applicable to the main **building** in the **District**.
 - b. All loading activities and parking areas shall be off-**street**, and provided on the same premises.
 - c. The storage of any soil, fertilizer, or similar loosely packaged materials shall be sufficiently contained to prevent any adverse effect upon adjacent properties.

T. Public and parochial schools.

1. A minimum **lot area** of ten (10) acres is required.
2. Playground equipment may only be located in the **side** or **rear yard** of the **lot**. The playground must be at least fifty (50) feet from any **side** or **rear lot line** abutting a **Residential District**.
3. The off-street parking shall be arranged so the area for bus loading and unloading of students will not be in the path of vehicular traffic.

4. Sidewalks shall be required connecting the off-street parking area to the main entrance of the school, and to the required sidewalk along the adjacent road right-of-way line.
5. The school **main building** shall be at least one hundred (100) feet from any **lot line**.

U. Publicly-owned athletic grounds, parks, and similar uses. Ancillary uses may be permitted if related to the main use.

1. The use shall be located on property with direct access to a paved **public street**.
2. Any outdoor activity areas shall be set back a minimum of one hundred (100) feet from any **Residential District** or use.
3. Lighting for parking areas or outdoor activity areas shall be shielded to prevent light from spilling onto any **Residential District** or use.
4. **Buildings** for storage of equipment, or other similar **buildings** shall be located at least fifty (50) feet from any **lot line**.
5. Minimum **lot area** shall be ten (10) acres.

V. Riding or private stables.

1. The minimum **lot area** shall be five (5) acres.
2. The maximum horse population shall be limited to two (2) horses for the first five (5) acres and an additional one (1) horse per each acre over five (5) acres.
3. Any **buildings** used to breed, house, feed, train, or shelter horses shall be located at least fifty (50) feet from any **lot line** and paddocks or corals must be at least ten (10) feet from any **side or rear lot line**.
4. The facility shall be so constructed and maintained that odor, dust, noise, or drainage shall not constitute a nuisance, disturbance, or hazard to adjacent or nearby property owners.
5. All on-site accumulations of manure and other animal related solid wastes shall be disposed of in accordance with Berrien County Health Department and State health regulations. On-site accumulations of manure shall not adversely affect adjoining parcels.
6. All egress points and off-street parking areas shall be of a durable and dust free surface, graded, and properly drained.
7. All outdoor lighting located on-site shall be constructed and installed so that all sources of light shall not be visible beyond the perimeter **lot lines**.
8. For riding stables only, one and one half (1.5) off-street **parking spaces** shall be provided for each horse kept on-site, plus any required for other uses accessory to the stable.
9. Off-street loading and unloading of horses, feed, straw, or any other on-site use related to the facility shall be completely on the property.

W. Radio, television, or telephone transmission towers, including any towers in excess of one hundred (100) feet in height or for Commercial Wireless Telecommunication Services.

1. Tower Co-Location
 - a. The construction and use of a new wireless communication facility shall not be granted unless and until the applicant demonstrates that a feasible co-location is not available for the coverage area and capacity needs.
 - b. The applicant shall submit to the **Township** an inventory of all towers, antennas, or sites approved for towers or antennas within the jurisdiction of Niles Charter **Township** or within one (1) mile of the border of the **Township**. The inventory

shall also include the following information on each tower, antenna, or site approved for towers or antennas:

- (1) Information about the location.
 - (2) **Height** of each tower.
 - (3) Design of each tower.
 - c. Any proposed tower for **commercial wireless telecommunication services** shall be designed structurally, electrically, and in all other respects, to accommodate both the applicant's equipment and comparable equipment for at least two (2) additional users. Towers must be designed to allow for future rearrangement of equipment upon the tower and to accept equipment mounted at varying **heights**. The applicant shall submit a statement in writing agreeing to permit future users to collocate on the tower.
 - d. The applicant shall submit a notarized statement by a registered design professional as to whether construction of tower will accommodate co-location of additional antennas for future users.
2. Tower Design, Appearance and Construction:
- a. Towers shall be designed to blend into the surrounding environment through the use of color and architectural treatment, except in instances where color is dictated by other state or federal authorities.
 - b. Towers shall not be illuminated unless required by other state or federal authorities. No signs or other advertising not related to safety or hazard warnings shall be permitted on any part of the tower or associated equipment or **buildings**.
 - c. The **Planning Commission** may require the **structures** or equipment on the ground to be screened with landscaping, a berm, walls, fence, or a combination of these elements.
 - d. All new **structures** must meet all State or Federal requirements and comply with applicable State or Local building codes and the applicable State or Local building codes.
3. Setbacks: Any part of the **structures** or equipment placed on the ground pertaining to the tower shall comply with the following **setbacks**, unless reduced by the Planning Commission when the intent of this Ordinance would be better served by the reduction:
- a. Towers must be set back a distance equal to at least seventy five percent (75%) of the **height** of the tower from any adjoining **lot line**.
 - b. Guy wires and **accessory buildings** must satisfy the minimum **setback** requirements for **main buildings** for the **district** in which they are located.
 - c. These provisions shall not apply to towers located on **buildings**, towers, or other **structures** in existence at the time of the adoption of this Ordinance.
4. Separation of Towers: The following separation distances shall apply to all towers and antennas, unless reduced by the Planning Commission when the intent of this Ordinance would be better served by the reduction. Separation distances shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in the following table.
- 5.

Off-Site Use/ Designated Area	Separation Distance
Single family detached or two family dwelling units	The greater of 200 feet or twice the height of the tower.
Approved, but not constructed, residential subdivisions or site condominium projects	
Vacant land in a Residential District	The greater of 100 feet or the height of the tower.
Multiple family dwellings	
Non-Residential Districts	Same as for main building setbacks.

6. Separation Between Proposed and Existing Towers: The following separation distances shall apply to all proposed towers and any preexisting towers, as measured along a straight line between the base of the proposed and the preexisting towers.

Proposed		Lattice	Guyed	Monopole	
Existing				> 75 ft.	< 75 ft.
Lattice		5,000 ft.	5,000 ft.	1,500 ft.	1,500 ft.
Guyed					
Monopole	> 75 ft.	1,500 ft.			750 ft.
	< 75 ft.	750 ft.			

7. Buildings or Other Equipment Storage.

- a. For antennas mounted on **structures** or rooftops, the equipment cabinet or **structure** used in association with antennas shall comply with the following:
 - (1) The cabinet or **structure**, if located on the rooftop, shall not contain more than two hundred fifty (250) square feet of **gross floor area** or be more than ten (10) feet in **height**.
 - (2) If the equipment **structure** is located on the roof of a **building**, the area of the equipment **structure** and other equipment and **structures** shall not occupy more than five percent (5%) of the roof area.
 - (3) Equipment storage **buildings** or cabinets shall comply with all applicable building codes.
- b. For antennas mounted on utility poles or light poles, the equipment cabinet or **structure** used in association with antennas shall be no greater than eight (8) feet in **height** or two hundred fifty (250) square feet in **gross floor area**. The **structure** or cabinet shall be screened by an evergreen hedge with an ultimate **height** of ten (10) feet and a planted **height** of at least thirty-six (36) inches. In all other instances, **structures** or cabinets shall be screened from view of all **Residential Districts** which abut or are directly across the **street** from the **structure** or cabinet by a solid fence eight (8) feet in **height** or an evergreen hedge with an ultimate **height** of eight (8) feet and a planted **height** of at least thirty- six (36) inches.
- c. For antennas located on towers the related unmanned equipment **structure** shall not contain more than two hundred fifty (250) square feet of **gross floor area** or

be more than ten (10) feet in **height** and shall be located in accordance with the minimum **yard** requirements of the **zoning district** in which located.

- d. Modification of **building** size requirements. Where co-location will be achieved, the **Planning Commission** may waive the requirements of Section 17.04 W.6.

8. Abandoned or unused towers and any associated **structures** or equipment shall be removed, within twelve (12) months of the cessation of operations, unless a time extension is granted by the **Zoning Administrator**. One (1) three (3) month extension shall be permitted if the **Zoning Administrator** finds that the owner or former operator of the facility is taking active steps to remove it.

X. Tool & die and machine shops.

1. The **main** and **accessory buildings** and **structures** shall not be located within one hundred (100) feet of any **Residential District** boundary.
2. The proposed site shall front upon a paved **public street**. All ingress and egress shall be from said **street**.
3. Proper measures, as determined by the **Planning Commission**, shall be taken to minimize the nuisance of noise and dust.

Y. Truck and freight terminals, with or without maintenance facilities.

1. Minimum **lot area** shall be three (3) acres.
2. The **lot** shall have at least one (1) **lot line** that abuts a major arterial road, as classified in the Niles Charter Township **Master Plan**. The ingress and egress for all vehicles shall be directly from that street
3. The main and accessory **buildings** shall be set back at least seventy five (75) feet from all **lot lines**.
4. Truck parking and staging areas shall be fenced and screened from the view of any abutting **Residential District** in accordance with the requirements of Section 3.12.
5. Disabled or inoperable trucks shall not be permitted outside of an enclosed **building** for more than five (5) consecutive days.
6. No trailers shall be stored on site for use as storage containers for more than five (5) consecutive days.

Z. Vehicle service stations and vehicle repair.

1. All **buildings, structures**, and equipment shall be located at least fifty (50) feet from any right-of-way line, and at least fifty (50) feet from any **side** or rear **lot line** abutting a **Residential District**.
2. No more than one (1) driveway shall be permitted for every one hundred (100) feet of **frontage** (or major fraction thereof) along any **street**, with a maximum of one (1) per **street** when located on a **corner lot**, and two (2) for any **interior lot**; provided the access management provisions of Section 3.34 shall be met.
3. All areas of the site accessible to vehicles shall be paved.
4. A raised curb of six (6) inches in height shall be constructed along the perimeter of all paved and landscaped areas.
5. All areas of the site not paved or occupied by **buildings** or **structures** shall be landscaped.
6. All lubrication equipment, hydraulic hoists, and pits shall be enclosed entirely within a **building**. All gasoline pumps shall be located at least forty (40) feet from any **lot line**,

- and shall be arranged so that vehicles shall not be supplied with gasoline or serviced while parked upon or over-hanging any public sidewalk, **street** or right-of-way.
7. When adjoining a **Residential District**, parking and storage areas shall be fenced and screened from the view of any abutting **Residential District** in accordance with the requirements of Section 3.12.
 8. All outside storage areas for trash, used tires, auto parts, and similar items shall be enclosed by a six (6) foot sight-obscuring wall or fence. No outside storage area shall exceed an area of two hundred (200) square feet. Outside parking of disabled, wrecked, or partially dismantled vehicles shall not exceed a maximum of three (3) vehicles.
 9. The rental of trucks, trailers, and any other vehicles on the premises is expressly prohibited without specific approval by the **Planning Commission**. If the use is permitted, proper screening, landscaping, and additional parking area shall be provided in accordance with the requirements set forth by the **Planning Commission**.
 10. The **lot** shall be located so it is at least three hundred (300) feet from an entrance or exit to any property on which is situated a public library, public or private school, playground, play field, park, church or hospital.
 11. All exterior lighting, including **signs**, shall be shielded to prevent the glare of lights from view by adjacent property. Canopy lights shall be recessed and shall not protrude below the surface of the canopy.
 12. Where applicable, vehicle queuing space shall be provided in front of each service bay for at least two (2) vehicles.
 13. The proposed site shall front upon and have direct access to a major or minor arterial road, as classified in the Niles Charter Township **Master Plan**.

AA. Vehicle wash establishments.

1. All washing activities must be carried on within a **building**.
2. Vacuuming activities may not be conducted in any **required yard**.
3. Sufficient space shall be provided to accommodate all vehicles queuing on the property, so no vehicles are required to wait on an adjoining **street** to enter the site. For automatic washes, the stacking space shall be equivalent to five (5) times the wash capacity or fifteen (15) spaces, whichever is greater. Wash capacity shall be determined by dividing the length of the mechanical wash/dry machinery by twenty-five (25) feet. For manual wash facilities, each stall shall have at least two (2) stacking spaces at the entrance and one (1) at the exit.
4. The proposed site shall front upon and have direct access to a major or minor arterial road, as classified in the Niles Charter Township **Master Plan**. All ingress and egress shall be from such street or streets.
5. All **buildings, structures**, and equipment shall be located at least fifty (50) feet from any right-of-way line, and at least one hundred (100) feet from any **side** or rear **lot** line abutting a **Residential District**.
6. No more than one (1) driveway shall be permitted for every one hundred (100) feet of **frontage** (or major fraction thereof) along any **street**, with a maximum of one (1) per **street** when located on a **corner lot**, and two (2) for any **interior lot**; provided, the access management provisions of sec. 3.34 shall be met.

CHAPTER 18

PUD - PLANNED UNIT DEVELOPMENT

(AMENDED JULY 6, 2010)

SECTION 18.01

INTENT

- A. Planned Unit Developments (PUDs) in the Township shall be established as a Special Land Use, where authorized, when approved by the Planning Commission in accordance with the procedures specified in this Chapter. The purpose of the Planned Unit Development is to further implement the intent of the Township Master Plan and to:
1. Provide for flexibility in the regulation of land development;
 2. Encourage innovation in land use and variety in design, layout, and type of buildings and structures;
 3. Achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities;
 4. Encourage the use of land in accordance with its character and adaptability;
 5. Encourage the provision of useful open space for residents of the development and, where feasible, the general public;
 6. Promote the enhancement of housing, employment, traffic circulation, pedestrian movement, and recreational opportunities that benefit all residents of the Township;
 7. Provide for the regulation of a variety of land uses not otherwise authorized within a single zoning district;
 8. Provide for developments which would result in recognizable and substantial benefits to the ultimate users of a development, and to the community in general, where such benefits would be unfeasible or unlikely to be achieved under the conventional requirements of this Ordinance; and
 9. Provide greater protection of, and reduce adverse impacts on, quality natural features in comparison to the impacts associated with a conventional development.
- B. In order to accomplish these objectives, this Chapter permits modification of the conventional requirements applicable to the underlying Zoning District(s), including the requirements, procedures and standards of Chapter 17 which may conflict with this Chapter. The use of land and the construction and use of buildings and other structures as a PUD shall be in conformance with the procedures, standards, requirements, and conditions for eligibility contained in this Chapter. A PUD should not be utilized to relax the requirements of the zoning ordinance, except in those cases where a demonstrable benefit to the community will result.

SECTION 18.02

QUALIFYING CONDITIONS

Any development, which fails to meet the following qualifying conditions, at a minimum, shall not qualify for development as a PUD.

- A. All PUDs shall be served by available public water and/or public sanitary sewer facilities or, when not available, a privately-owned and operated licensed community system approved by the Planning Commission, the Berrien County Health Department, or other agencies, as appropriate. For the purposes of this Chapter, public water and/or sanitary sewer shall be considered available if public service mains or sewer lines with sufficient available capacity to serve the proposed development are located within 1,000 feet of the boundary of any portion of the proposed PUD.
- B. The tract of land for which a PUD application is received must be either in one ownership or the subject of an application filed jointly by the owners of all properties and/or their agent. In the case of a PUD filed jointly by the owners of all properties, the nature of the relationship and any agreement among the joint owners shall be disclosed and the Planning Commission shall be satisfied that such relationship is capable of implementing the PUD. If the PUD application is filed by a prospective purchaser or option holder, written consent of all property owners must be submitted as evidence of their concurrence with the PUD application.
- C. The proposed uses, residential densities and land use intensity of the PUD must be consistent with the Master Plan, except as otherwise permitted under the terms of this Chapter.
- D. All PUDs that are predominately residential in character shall provide a minimum of twenty-five (25%) percent open space. For the purposes of this Chapter, a PUD shall be regarded as predominately residential in character if 50% or more of the developed portion of the site is to be used for residences. Open spaces and natural features that significantly contribute to the community's character must be preserved in perpetuity through the condominium documents, a conservation easement, deed restriction development agreement or other mechanism satisfactory to the Township and shall be maintained as provided in Section 18.03, B, 5.
- E. The proposed PUD shall be compatible with surrounding uses of land, the natural environment, and the capacities of public services and facilities affected by the development. The Planning Commission may request that groundwater resource studies be conducted to ensure adequate water supply, and may require pre-approval from the County Health Department, County Road Commission, the Michigan Department of Natural Resources and Environment or any other State or Federal agency that has jurisdiction over the development.
- F. The proposed PUD must meet all the review standards of Section 19.03.
- G. The proposed PUD must meet the standards for special land use permits, as set forth specified in Section 17.03.
- H. The PUD site shall have direct access to a major or minor arterial road, as classified by the Traffic Network Map in the Township Master Plan.

SECTION 18.03

SITE DEVELOPMENT REQUIREMENTS

Except as otherwise approved pursuant to this Chapter, all requirements of the underlying zoning district pertaining to land uses and dimensional standards shall apply to all PUD developments. Further, all PUD developments must adhere to the following standards:

- A. Residential Density. The number of residential dwelling units permitted shall be determined based on the potential yield of the site, as permitted by the zoning regulations applicable to the site. The Township may approve residential dwellings in excess of the number that might otherwise be approved pursuant to subparagraph 2 of this Section.
 - 1. Base Density. The number of residential dwelling units allowed shall be calculated by dividing the Net Developable Area, as set forth below, by the minimum lot size required

in the underlying zoning district. Where there are multiple underlying zoning districts, the base density shall be determined for each and the results shall be summed.

- a. Net Developable Area shall include the gross square footage of the site, measured from the road rights-of-way, minus undevelopable land as defined herein,
 - 1) Provided, that areas of wetlands or surface water, may be included within the Net Developable Area so long as the total of such area does not comprise more than 30% of the total Net Developable Area-
 - 2) Net Developable Area shall exclude 20% of the gross square footage, to account for proposed roads. A smaller percentage may be considered if an approvable parallel plan is submitted showing how roads designed under conventional design would require less land area. Such parallel plan shall meet the requirements of subparagraph (4) of this section
 - 3) The Township shall review the applicant's site plan application for the determination of Net Developable Area and determine the resulting base density. In the event the applicant does not agree with the Township's determination of base density, the applicant shall prepare a parallel plan as specified in sub paragraph (4) of this Section and base density shall be determined based on said parallel plan.
 - 4) The parallel plan shall depict a "by right" feasible build out of the site based on the underlying zoning regulations without application of any of the provisions of this PUD Chapter. A parallel plan shall meet the following requirements
 - a) The parallel plan shall contain enough detail to permit the Township to evaluate the feasibility of development for each indicated Lot and/or Dwelling Unit.
 - b) At a minimum, the parallel plan shall show property boundaries and dimensions, individual **lots**, building envelopes, street rights-of-way or easements, significant natural features (wetlands, water features, and similar constraints), and utility easements. The Planning Commission may require additional detail or information as it may determine necessary to evaluate the feasibility of the parallel plan.
 - c) All lots or buildings shown on the parallel plan shall be buildable, which for the purposes of this Section shall mean lots or building areas that meet the minimum requirements of the Zoning District to which the property corresponds; that have an area of sufficient size and shape to accommodate the proposed principal building; and that provide required driveways, streets, or other means of permitted access.
- b. For sites containing less than 20% net developable area, the applicant shall demonstrate to the Township's satisfaction that the proposed development can be reasonably accommodated on the site, given setback and buffering requirements, without negative impacts to the environment or the general public.

2. Potential Density Increases. Based on the following, the Planning Commission may approve an increase in density on the site up to 120% of the base density where it finds, in its sole judgment, that the development will provide significant benefits to the community, which may include one or more of the elements or amenities listed below with the corresponding increase in density as noted. Any increase in density permitted under this paragraph shall be determined in the sole discretion of the Planning Commission. The total residential density on the entire PUD shall not exceed 120% of the base density.

Project Elements or Amenities	Resulting Potential Increase in Base Density
a. Provision of open space that is open to the general public.	Up to 5%
b. Inclusion of pedestrian pathways and non-motorized elements.	Up to 5%
c. Inclusion of at least 10% additional open space above the minimum required.	Up to 2%
d. Preservation of significant natural features, such as steep slopes, site topography, wetlands, woodlands, important wildlife habitat, streams and/or natural vegetative buffers.	Up to 3%
e. Inclusion of low-impact design of stormwater systems, parking areas, and green buildings. Design elements such as rain gardens, pervious pavement products or grass pavers, and LEED certifications shall contribute to low-impact design.	Up to 3%
f. Use of alternative energy sources that can provide 5% or more of the needed energy for the site. Detailed calculations of anticipated energy needs must be submitted to document this benefit.	Up to 3%
g. Donation and acceptance of valuable recreation land to the Township or other public entity for enjoyment by the general public	Up to 2%
h. Provision of unique development patterns, such as traditional neighborhood design or mixed-use, that support the vision of the Township as expressed in the Master Plan.	Up to 2%

3. In applying the percentages of the table in paragraph 2 of this section, a fractional result shall be rounded to the nearest whole number.
- B. Open Space. In predominately residential PUDs, open space shall meet the following requirements:
1. Individual areas of open space shall be large enough and of proper dimensions to contribute significantly to the intent of the PUD, and in no event shall an isolated area of less than 1,000 square feet or a area with the least dimension of 5 feet or less be considered a part of the designated open space.
 2. The following land areas or features shall not be included as designated open space for the purposes of meeting minimum open space requirements:
 - a. Any area to be conveyed for private ownership, including lots, development

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- envelopes or building envelopes or limited common elements in a site condominium. General common elements of a site condominium may be included if they otherwise meet the requirements of this ordinance.
- b. The area of any road right-of-way or private road easement.
 - c. Surface water in natural streams or rivers or in natural or man-made lakes or ponds. Areas devoted to constructed stormwater detention or retention basins may be counted for up to fifty percent (50%) of the total open space requirement if they are designed to have the appearance of a natural wetland.
 - d. Parking and loading areas.
 - e. Any other undeveloped areas not meeting the intent and standards for open space stated in this Section, as determined by the Planning Commission.
3. At least one-third (1/3) of the required open space shall be usable open space for the residents of the development and may be available for use by the general public.
 4. Allowable use(s) of the designated open space shall be clearly established in a conservation easement, master deed, deed restriction or other legal instrument satisfactory to the Township. Such legal instrument shall prohibit the following unless prior approval of the Township and any authority having jurisdiction is first granted:
 - a. Dumping or storing of any material or refuse.
 - b. Activity that may cause risk of soil loss.
 - c. Cutting or removal of live plant material in natural areas, except for removal of dying or diseased vegetation.
 - d. Cutting, filling or removal of vegetation from wetland areas.
 - e. Use of pesticides, herbicides, or fertilizers either within or adjacent to (within 100 feet of) water bodies and wetlands, unless required by the Michigan Department of Environmental Quality to manage nuisance species.
 5. Open Space Maintenance. Designated open space shall be set aside through an irrevocable conveyance, approved by the Township Attorney, such as a recorded deed restriction, a conservation easement or through condominium documents. Such conveyance shall, at a minimum, include provisions to accomplish the following objectives with additional provisions as may be required to address any unique circumstances pertaining to the site in question:
 - a. A clear designation of the entity, person(s) or agency to be perpetually responsible for the maintenance of the open space.
 - b. Standards for maintenance of the open space, which shall standards for the removal of trash or waste material within the open space, clean up of storm damage, or removal of diseased plant materials and related matters
 - c. A provision that provides the Township with the irrevocable right, but not the responsibility, to maintain such open space and to assess the costs therefore, including any legal or administrative costs, upon the owners of the open space, or the owners of the properties in the PUD, if such area is considered a general common element. The exercise of such right shall be at the sole discretion of the Township in the event it finds that open spaces are not adequately maintained, or are determined by the Township to be a public nuisance.
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- C. PUD Perimeter Setbacks: No building envelope shall be located nearer to the perimeter boundary of the PUD than the required yard dimension in the underlying zoning district in accordance with the following requirements. In areas where the underlying zoning district is AG, RP, R-1A, R-1B or R-2, the following additional regulations shall apply to said PUD perimeter setback area:
1. No native or natural vegetation shall be removed from the PUD perimeter setback, except for that necessary for entrance streets or private roads. The Planning Commission may modify this requirement provided the applicant demonstrates that the clearing of existing vegetation would contribute significantly to the intent of this Chapter as described in Section 18.01.
 2. No grading or changes in topography shall be permitted, except as may be necessary to construct entrance streets or private roads, or provide screening as noted in subsection (3) below.
 3. The PUD perimeter setback may be reduced if a year-round, opaque, natural screen is present or provided for at least seventy (70%) percent of the lineal distance of the property line abutting any street and having a depth of at least twenty-five (25) feet. The natural screen shall be subject to the approval of the Planning Commission, shall have at least fifty (50%) percent opacity from the street view, and shall consist of existing vegetation, land forms, or landscaped areas using native or natural materials, or a combination thereof.
- D. Non-Residential Development Requirements:
1. Non-residential uses shall be integrated into the design of the PUD with complementary and coordinated architectural themes and site development elements, such as signs, landscaping, etc.
 2. Non-residential uses shall be permitted only if they will not materially alter the residential character of nearby neighborhoods and those within the PUD.
 3. All merchandise for display, sale or lease shall be located in areas noted on an approved site plan. All other materials must be kept entirely within an enclosed building(s) or otherwise screened from view from any off-site vantage point.
- E. Driveway Access and Circulation:
1. Access points to the PUD shall be carefully planned to minimize congestion at intersections and to promote safe vehicular, pedestrian and non-motorized transit. The Planning Commission may require that the applicant provide a traffic impact study to demonstrate safe and efficient circulation within the PUD and on adjoining roadways.
 2. Additional right-of-way shall be provided as determined by the Planning Commission to accommodate improvements to the existing arterial roadway system that are planned or required to mitigate traffic associated with the PUD.
- E. Phased PUDs. The Planning Commission shall evaluate each phase of a proposed PUD to determine whether each phase is able to stand on its own as a viable development and a useful and desirable addition to the Township in the event subsequent phases are deferred or never implemented.

SECTION 18.04
WAIVERS FROM STANDARDS

Requirements and standards contained in this Chapter may be modified or waived by the Planning Commission, provided that it finds:

- A. The objectives and intent of the Master Plan, this Chapter, and the underlying zoning district are better served by such modifications, rather than through the strict application of the requirements contained therein.
- B. The requested waiver will not increase the number of residential units above the maximum permitted in Section 18.03, (2).
- C. The requested waiver will not decrease the number of required parking spaces below the minimum required, unless a parking study is provided that, in the opinion of the Planning Commission requires such reduction.
- D. Appropriate traffic and pedestrian safety is insured.

SECTION 18.05
OPTIONAL PRE-APPLICATION CONFERENCE

- A. A pre-application conference may be held with the Planning Commission for the purpose of determining the eligibility of the request for consideration as a PUD.
- B. A request for a pre-application conference shall be made to the Zoning Administrator who shall schedule a date and time with the Planning Commission. Prior to the pre-application conference, the applicant shall submit eleven (11) copies of a conceptual plan which shows the property location, boundaries, significant natural features, vehicular and pedestrian circulation, acreage, property dimensions, land use for the entire site, and anticipated number and density of dwelling units.
- C. The Planning Commission may converse with the applicant regarding the intent of the proposed PUD and it may make inquiries or suggest additional information that may be helpful in reaching a decision on the proposal. The Planning Commission may highlight possible issues or concerns but shall not render any opinion as to whether the application conforms with the intent for PUDs in Section 18.01, whether it qualifies under the minimum requirements of Sections 18.02 and 18.03, or any other portion of this Chapter, and whether the general concept is consistent with the Master Plan until it has received and reviewed a complete application and held the required public hearing. In no case shall any statements made by the Planning Commission at a pre-application conference be construed as a representation concerning approval or denial of the PUD.

SECTION 18.06
PUD APPLICATION AND PRELIMINARY DEVELOPMENT PLAN

Applicants seeking approval of a PUD shall submit a complete application and a preliminary development plan to the Zoning Administrator, who shall forward the materials for review to the Planning Commission, Township planner and engineer, fire department, and other applicable agencies and professionals. The PUD application shall include the following:

- A. A completed application form supplied by the Zoning Administrator.
- B. A density calculation indicating the number of dwelling units, and a narrative description of the benefits demonstrated to qualify the project for additional density. This element of the

- application shall include the parallel plan, if required under Section 18.03, 1, a, (3), or if elected by the applicant under Section 18.03, 1, a, (2).
- C. Payment of applicable fees, as established by the Township Board.
- D. A narrative statement describing:
1. The objectives of the PUD and how it relates to the intent for PUDs, as described in Section 18.01;
 2. The conformance of the PUD with the Master Plan;
 3. The phases of the PUD and approximate time frame for each phase and how each phase will form a viable development that is useful and desirable on its own in the event the subsequent phases fail to materialize.
 4. All proposed deed restrictions, covenants, or similar legal instruments to be used within the PUD;
 5. The anticipated start and completion of construction;
 6. Location, type, and size of areas to be designated for common open space; and
 7. All sensitive lands regulated by the MDNRE or any other governmental agency, including the approximate square footage/acreage of major types of such natural features and a description of mechanisms proposed to protect such sensitive lands.
- E. Eleven (11) copies of a preliminary development plan shall be submitted. If the PUD is to be developed in phases, the preliminary development plan shall show all phases. The preliminary plan shall contain the following:
1. The PUD's name, the applicant's name and signature, the name and address of the firm and individual who prepared the preliminary development plan, scale, and north arrow;
 2. Property lines, dimensions of all property lines, and size of the PUD and its individual phases, in acres;
 3. Existing zoning of all lands within one-half mile of the PUD and the existing land use of all abutting properties;
 4. Existing natural features on the site including water, stands of trees, drainage ways, flood plains, wetlands, steep slopes, and similar features;
 5. Existing buildings and structures on the site;
 6. Proposed uses and their approximate locations;
 7. Illustration of area(s) proposed as permanent open space with the land area included and any features to be protected and amenities to be added.
 8. Illustration and legal description of existing and proposed easements
 9. Illustration and description of any existing encroachments on the property.
 10. Rights-of-way and pavement edges of existing streets abutting the PUD;
 11. Approximate locations of proposed access drives and streets within the PUD;
 12. Proposed walkways or pedestrian paths;
 13. Proposed method of providing water, sanitary sewer, and stormwater drainage facilities;
 14. Layout and typical dimensions of proposed lots;

15. Approximate phases of the PUD;
 16. Proposed residential density by area or phase; and
 17. Location of building envelopes, clearance zones, sensitive lands and unconstrained lands.
- F. The Planning Commission may require additional information reasonably necessary to demonstrate compliance with the review standards and other requirements of this Chapter. Such information may include, but not be limited to, soil reports, hydrological tests, traffic studies, market analyses, wetland determinations, or other such evidence which shall be submitted by the applicant prior to consideration and a final decision on an application.

SECTION 18.07**NOTICE AND PUBLIC HEARING FOR PUD**

- A. Upon receipt of an application for PUD approval and a determination by the Zoning Administrator that the application is complete, the Zoning Administrator shall cause notice to be given, in accordance with the requirements for special land uses, as provided in sec. 17.02 D. The notice shall:
1. Describe the nature of the proposed PUD;
 2. Describe the property which is the subject of the PUD application, by both legal description and Street address;
 3. State the time, date, and place of the public hearing; and
 4. State when and where written comments will be received concerning the application.
- B. Following notice, the Planning Commission shall hold a public hearing on the proposed PUD, for the purpose of receiving public comment on the application. The applicant may meet informally with residents of the general area surrounding the proposed PUD site prior to the public hearing or even prior to submitting the PUD application to explain the development, answer questions, and make adjustments to the proposal to address concerns.

SECTION 18.08**PLANNING COMMISSION DECISION**

- A. Following the public hearing, the Planning Commission shall review the PUD request and development plan based on the following and shall approve, approve with conditions, or deny the PUD request. The Planning Commission shall articulate findings of fact and reasons for such decision, specifically citing appropriate standards and Sections of the Ordinance, and identifying those specific conditions, if any, it considers necessary. The Planning Commission shall consider at least the following factors in making its decision concerning the PUD request:
1. Conformance of the PUD with the Master Plan;
 2. Compatibility with the type, character, and density of existing and anticipated uses surrounding the site;
 3. Consistency with the intent and qualifying conditions of this Chapter in Sections 18.01 and 18.02, respectively, and;
 4. Conformance with the standards of Section 18.10, if a Final Development Plan is submitted with the PUD application.

- B. Conditions of Approval. Reasonable conditions of approval established by the Planning Commission shall meet all of the following requirements:
1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole;
 2. Be related to the valid exercise of a police power and purposes which are affected by the proposed use or activity; and
 3. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

SECTION 18.09**FINAL DEVELOPMENT PLAN APPLICATION**

Within two (2) years of the Planning Commission's approval of the PUD and the preliminary development plan, the applicant shall submit to the Planning Commission a request for final PUD approval. If a request for final approval is not submitted within two (2) years, the provisions of Section 18.15 shall apply. An application for final PUD approval shall consist of the following:

- A. A completed application form, supplied by the Zoning Administrator;
- B. Payment of a fee, as established by the Township Board;
- C. A narrative demonstrating compliance with the findings, review comments, and conditions, if any, from the Planning Commission review of the preliminary development plan and a narrative explanation of the changes made to the final development plan in response to those items;
- D. Evidence that all required permits, other than building permits, have been applied for, as applicable, from County, State, and/or Federal agencies; and
- E. A site plan containing all of the information required in Section 19.03 however, individual detached single family dwellings need not be shown on the plan. For developments consisting of three (3) or more phases, a plan meeting the requirements of Section 18.06, F, may be submitted for the overall PUD and a detailed plan as required for final development plan shall be submitted for at least the first phase. Each subsequent phase shall be reviewed in the same manner.

SECTION 18.10**PLANNING COMMISSION REVIEW OF FINAL DEVELOPMENT PLAN**

- A. The Planning Commission shall review the final development plan in relation to its conformance with the preliminary development plan and the conditions, if any, of the PUD approval. If it is determined that the final development plan is not in substantial conformance to the preliminary development plan, the review process shall be conducted as a preliminary development plan review, in accordance with the procedures of Section 18.06 through Section 18.08 of this Ordinance.
- B. If the final development plan is consistent with the approved preliminary development plan, the Planning Commission shall review the final development plan in accordance with the criteria of Section 18.03.
- C. The Planning Commission shall prepare a report of its findings and shall approve, approve with conditions, or deny the final development plan.

SECTION 18.11**PERFORMANCE GUARANTEE REQUIREMENTS**

- A. In the interest of insuring compliance with the Zoning Ordinance provisions, protecting the natural resources and health, safety and welfare of the residents of the Township, and future users or inhabitants of an area for which a proposed PUD has been submitted, the Planning Commission, may require the applicant to obtain a performance guarantee as set forth herein. Provided, however, that the provisions of this Section 18.11 shall not apply to any Planned Unit Development or any phase of a Planned Unit Development involving fewer than ten (10) acres in area and without significant public utilities. The purpose of the performance guarantee is to:
1. Insure compliance with the Zoning Ordinance by completion of improvements including, but not limited to, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls and landscaping;
 2. Insure compliance with all conditions place on the approved land use; and
 3. Restore the land to its condition prior to the approval of the special land use permit authorizing a PUD in the discretion of the Township if the approved land use is not completed.
- B. Performance guarantee as used herein shall mean security of some sort, such as, but not limited to, a cash deposit, certified check, or irrevocable bank letter of credit to the benefit of the Township in a form approved by the Township Attorney and in an amount of the value of the improvements or construction permitted or called for in the approved phases of the PUD as determined by the Township.
- C. By accepting a special land use permit authorizing a PUD, the applicant/land owner irrevocably authorizes the Township to enter upon the subject property to complete the improvements authorized by the permit or to restore the land to its condition prior to the approval of the variance or aforementioned permits in the event of a default by the applicant/land owner under this Ordinance. This authorization expires upon the completion of all the required improvements of the PUD as determined by the Township.
- D. Any performance guarantee posted in accordance with this Section 18.11, shall not be reduced until the Zoning Administrator confirms that not less than sixty percent (60%) of the required improvements have been completed. At that time, the amount of the performance guarantee shall be reduced by not more than seventy-five percent (75%) of the value of the improvements completed, as determined by the Zoning Administrator. In no event shall the amount of the performance guarantee be permitted to fall below twenty-five percent (25%) of the original total until all required improvements have been completed, including official approval for occupancy, as determined by the Zoning Administrator.
- F. Upon the satisfactory completion of the improvement for which the performance guarantee was required, as determined by the Zoning Administrator, the Township Treasurer shall return to the applicant the performance guarantee deposited.

SECTION 18.12**RESERVED**

SECTION 18.13
PUD AGREEMENT

Prior to issuance of any building permits or commencement of construction on any portion of the PUD, the applicant shall enter into a development agreement with the Township setting forth the applicant's obligations with respect to the PUD. The development agreement shall be prepared by the applicant in recordable form and shall be subject to review and approval by the Township Attorney. The Agreement shall describe all improvements to be constructed as part of the PUD and shall incorporate, by reference, the final development plan with all required revisions, other documents which comprise the PUD, and all conditions attached to the approval of the PUD. The agreement shall also establish the remedies of the Township in the event of default by the applicant in carrying out the PUD, and shall be binding on all successors in interest to the applicant. All documents shall be executed and recorded in the office of the Berrien County Register of Deeds, at the expense of the applicant.

SECTION 18.14
CHANGES TO AN APPROVED PUD

Changes to an approved PUD shall be permitted only under the following circumstances.

- A. The holder of an approved PUD final development plan shall notify the Zoning Administrator, in writing, of any desired change to the approved PUD.
- B. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the PUD, nor any specified conditions imposed as part of the original approval. Minor changes include the following:
 - 1. Reduction of the size of any building, except for buildings considered important to the project theme or amenities of the development, in the judgment of the Township
 - 2. Reduction of the size of any sign;
 - 3. Movement of buildings and/or signs by no more than ten (10) feet;
 - 4. Landscaping approved in the final development plan that is replaced by similar landscaping to an equal or greater extent;
 - 5. Changes in floor plans, of up to five (5%) percent of the total **floor area**, which do not alter the character of the use or increase the amount of required parking;
 - 6. Internal rearrangement of a **parking lot** which does not affect the number of **parking spaces** or alter access locations or design;
 - 7. Changes required or requested by the Township, Berrien County, or other State or Federal regulatory agency in order to conform to other laws or regulations unless such changes have the potential to impact adjoining properties; or
- C. A proposed change not determined by the **Zoning Administrator** to be minor shall be submitted by the applicant as an amendment to the PUD and shall be processed in the same manner as the original PUD application, including both preliminary and final plan review.

SECTION 18.15
TIME LIMIT FOR APPROVED PUD

Each PUD shall be under construction within two (2) years after the date of approval of the PUD final development plan, except as noted in this Section.

- A. The **Planning Commission** may grant extensions of up to (1) year in duration if the applicant

applies for such extensions prior to the date of the expiration of the PUD or any previously-authorized extensions and provided that:

1. The applicant presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the applicant;
 2. The PUD requirements and standards, including those of this Ordinance and the **Master Plan**, that are reasonably related to the development have not changed; and
 3. The conditions affecting the original approval, including the land uses and related conditions in the vicinity of the site have not changed significantly since the original approval.
- B. If any of the provisions of Section 18.15, A, are not fulfilled, or if a previously-approved extension has expired without meaningful commencement of construction, the PUD approval shall be null and void.

SECTION 18.16

EXISTING PLANNED UNIT DEVELOPMENTS

Any planned unit development that has been approved by the Township under previous versions of this Zoning Ordinance shall continue to be occupied, used and developed in accordance with the provisions in effect when approval was granted. However, after the effective date of the ordinance adopting this Section, any changes or modifications to such previously-approved PUDs shall be considered and reviewed in accordance with the requirements and procedures of this Chapter.

CHAPTER 19

SITE PLAN REVIEW

SECTION 19.01

PURPOSE

The purpose of this Chapter is to provide for consultation and cooperation between the applicant and the Township in order that the applicant may realize planned objectives in the use of land within the regulations of this Zoning Ordinance. It is also intended to ensure that the development be completed with minimum adverse effect on the use of adjacent **streets** and highways, and on the existing and future uses and the environment in the general vicinity.

SECTION 19.02

APPLICABILITY

In accordance with the provisions of this Chapter, the **Planning Commission** shall be furnished a Site Plan of the proposed development prior to the creation of a use or the erection of a **building** in the **Districts** and conditions cited below:

- A. All Permitted Uses within any of the following districts:
 - 1. R-2, High Density Residential
 - 2. R-3, Manufactured Housing Community
 - 3. OS, Office Service
 - 4. LB, Local Business
 - 5. GB, General Business
 - 6. HB, Highway Business
 - 7. I, Industrial
- B. All Special Land Uses in any **District**.
- C. Construction in any **District** of a **building** addition, with an enclosed floor area greater than twenty-five percent (25%) of the existing enclosed **building** floor area.
- D. Site condominiums in any **District**.
- E. Planned unit developments in any **District**.
- F. Open Space Preservation Developments, as permitted in Section 3.33
- G. The following shall be exempt from site plan review, except that the **Zoning Administrator** shall review a plan to ensure compliance with this Ordinance.
 - 1. **Single family detached and two-family dwellings** (except those that are required to receive Special Land Use approvals).
 - 2. **Farms.**
 - 3. **Roadside stands** with less than two-hundred (200) square feet of sales area.
 - 4. **State licensed residential family care facilities and family day care homes.**
 - 5. **Home occupations.**
 - 6. **Accessory buildings.**

SECTION 19.03**SITE PLAN REVIEW REQUIREMENTS**

- A. Each site plan submitted shall contain the information listed herein, unless an item is specifically waived by the Planning Commission. In no case, shall the Planning Commission be authorized to waive the site plan requirement in its entirety.
- B. The site plan shall be prepared by a registered professional engineer, land surveyor, architect, or landscape architect and shall contain the professional seal of the preparer.
- C. Eleven (11) copies of a site plan at a scale not to exceed one (1) inch equals one hundred (100) feet (1" = 100') for properties in excess of three (3) acres or one (1) inch equals twenty (20) feet for properties of three (3) acres or less. The following items shall be shown on the plan:
1. Date, north arrow, and scale.
 2. The signed seal, name, and address of the professional individual, and firm, responsible for the preparation of the site plan.
 3. The name and address of the property owner or petitioner.
 4. A location sketch showing the subject property in relation to the surrounding area.
 5. Legal description of the subject property or parent tract and leased **parcel** (if applicable).
 6. The size (in acres) of the subject property, and approximate number of acres allocated to each proposed use (buildings, parking, **street** right-of-way, open space, etc.).
 7. **Lot lines** and required **setbacks** shown and dimensioned.
 8. **Gross floor area** for **buildings** and **structure**, gross area for off-street parking areas, **streets** and drives, and open space shall also be indicated.
 9. The location, footprint, and dimensions of all existing and proposed **structures** on the subject property including **dwelling unit** densities by type, if applicable.
 10. The location of all existing and proposed drives (including dimensions and radii), acceleration and deceleration lanes, sidewalks, signs, exterior lighting, curbing, parking areas (including the dimensions of a typical parking space and the total number of parking spaces to be provided), and unloading areas.
 11. The location of all existing vegetation and the location, type, and size of all proposed landscaping, and the location, **height** and type of existing and proposed fences and walls.
 12. Size and location of existing and proposed utilities, including any proposed connections to public, or private community sewer or water supply systems. The nearest location, if within two (2) miles, of public water and sanitary sewer service shall also be identified.
 13. The location and size of all surface water drainage facilities, including source, volume expected, route, and course to final destination.
 14. Existing and proposed topographic contours at a minimum of five (5) foot intervals.
 15. Recreation areas, common use areas, flood plain areas and areas to be conveyed for public use and purpose.
 16. The location of all existing **structures**, driveways, and parking areas within one hundred (100) feet of the subject property's boundary. If such land is vacant, the site plan shall indicate that fact.
 17. The location, pavement width and right-of-way width of all roads, **streets**, and access easements within one hundred (100) feet of the subject property.
 18. The existing zoning and use of all properties abutting the subject property.
 19. A narrative and schedule describing any potentially hazardous materials and the methods of storage and handling of such materials.
 20. The Planning Commission may require additional information deemed necessary to address specific issues. This may include, but is not limited to, traffic studies, DNR

requirements, MDEQ requirements, ground water studies, drainage studies, and similar impact reports.

SECTION 19.04**APPLICATION AND REVIEW**

- A. Site plans, a completed application form, and an application fee shall be submitted to the **Zoning Administrator**, by the petitioner or his designated agent, at such time prior to the next regular Planning Commission meeting as prescribed by the Planning Commission. The **Zoning Administrator** shall cause the submittal to be placed on the agenda of the next available **Planning Commission** meeting, subject to allowing sufficient time for staff, consultant, and agency reviews.
- B. The **Planning Commission** shall review the site plan and shall approve, disapprove, or approve subject to conditions, the site plan, in accordance with the provisions of this Chapter and the purpose of this Ordinance.
- C. Any conditions or modifications desired by the **Planning Commission** shall be recorded in the official minutes of the meeting.
- D. Three (3) copies of the final approved site plan shall be signed and dated by the **Planning Commission** secretary and the applicant. One (1) of these approved copies shall be kept on file by the **Township Clerk**, one (1) shall be kept on file by the **Zoning Administrator**, and one (1) shall be returned to the petitioner or his designated representative.
- E. Each development shall be under construction within one (1) year after the date of approval of the site plan, except if an extension is granted as noted below. If neither of the provisions below are fulfilled, or the extension has expired prior to construction, the site plan approval shall be null and void.
 - 1. The **Planning Commission** may grant one (1) six (6) month extension of the one (1) year approval period, provided the applicant requests such extension, in writing, prior to the date of the expiration of the site plan.
 - 2. The extension shall be approved if the applicant presents reasonable evidence to the effect that said development has encountered unforeseen difficulties beyond the control of the applicant, and the project will proceed within the extension period.

SECTION 19.05**PLAT REQUIREMENTS**

In those instances in which Act 288, Michigan Public Acts of 1967, as amended, the Land Division Act, is involved (such as PUDs), the owner shall, after Site Plan approval, submit the preliminary and final plats to the Township in conformance with Act 288, and in accordance with all other applicable codes, acts and ordinances. Such plats shall remain in conformance with the approved Site Plan.

SECTION 19.06
ADMINISTRATIVE FEES

- A. Any Site Plan application shall be accompanied by a non-refundable fee in accordance with the schedule of fees established by the **Township Board**.
- B. Such fee shall be for the purpose of payment of the administrative costs and services expended by the Township in the implementation of this Chapter and the processing of the application. Such fee may also be used to reimburse another party retained by the Township to provide expert consultation and advice regarding the application. No part of such fee shall be refundable to the applicant.

SECTION 19.07
CHANGES IN THE APPROVED SITE PLAN

Changes to the approved site plan shall be permitted only under the following circumstances:

- A. The holder of an approved site plan shall notify the **Zoning Administrator** in writing of any proposed change to an approved site plan.
- B. Minor changes may be approved by the **Zoning Administrator** upon determining that the proposed revision(s) will not alter the basic design or any specified conditions imposed as part of the original approval. Minor changes shall include only the following:
 - 1. Change in any **building** size, up to five percent (5%) in **gross floor area**.
 - 2. Movement of **buildings** or other **structure** by no more than ten (10) feet.
 - 3. Replacement of plant material specified in the landscape plan with comparable materials of an equal or greater size.
 - 4. Changes in **building** materials to a comparable or higher quality.
 - 5. Changes in floor plans which do not alter the character of the use.
 - 6. Changes required or requested by the **Township**, the Berrien County Road Commission, or other County, State, or Federal regulatory agency in order to conform to other laws or regulations.
- C. A proposed change not determined by the **Zoning Administrator** to be minor shall be submitted to the **Planning Commission** as a site plan amendment, and shall be reviewed in the same manner as the original application, including payment of an application fee.

SECTION 19.08
REVIEW STANDARDS

The following standards shall be utilized by the **Planning Commission** in reviewing all site plans. These standards are intended to provide a frame of reference for the applicant in the preparation of site plans as well as for the reviewing authority in making judgment concerning them. These standards shall not be regarded as inflexible requirements, and are not intended to discourage creativity, invention, or innovation.

- A. The uses proposed will not adversely affect the public health, safety, or welfare. Uses and **structures** located on the site shall take into account topography, size of the property, the uses on adjoining property and the relationship and size of **buildings** to the site.

- B. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.
- C. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation shall be provided for ingress and egress points, and within the site. Drives, **streets** and other circulation routes shall be designed to promote safe and efficient traffic operations within the site and at ingress and egress points.
- D. The arrangement of vehicular and pedestrian connections to existing or planned streets in the area shall provide a safe and efficient circulation system for traffic within Niles Charter Township.
- E. Removal or alteration of **significant natural features** shall be restricted to those areas which are reasonably necessary to develop the site in accordance with the requirements of this Ordinance. The **Planning Commission** may require that landscaping, buffers, and greenbelts be preserved or provided to ensure that proposed uses will be adequately buffered from one another, and from surrounding public and private property.
- F. Areas of natural drainage such as swales, wetlands, ponds, or swamps shall be protected and preserved, insofar as practical, in their natural state to provide areas for natural habitat, preserve drainage patterns, and to maintain the natural characteristics of the land.
- G. The site plan shall provide reasonable visual and sound privacy for all **dwelling units** located within the site, and adjacent thereto. Fences, walls, barriers, and landscaping shall be used, as appropriate, to accomplish these purposes.
- H. All **buildings** and groups of **buildings** shall be arranged so as to permit necessary emergency vehicle access. To this end the **Township** shall refer all site plans for review and comment by the **Township** Fire Department.
- I. All streets and driveways shall be developed in accordance with the **Township** Land Division Ordinance, the Berrien County Road Commission, or Michigan Department of Transportation specifications, as appropriate. Except that the **Planning Commission** may impose more stringent requirements than those for the Road Commission or Department of Transportation with respect to driveway location and spacing. In addition, sidewalks may be required if determined to be necessary or appropriate for pedestrians and non-motorized vehicles.
- J. Appropriate measures shall be taken to ensure that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Provisions shall be made to accommodate storm water, prevent erosion and the formation of dust. The use of detention or retention ponds may be required. Surface water on all paved areas shall be collected at intervals so that it will not restrict vehicular or pedestrian traffic, or create puddles in paved areas. Catch basins may be required to contain oil filters or traps to prevent contaminants from being discharged to the natural drainage system.
- K. Exterior lighting shall be arranged so that it is deflected away from adjacent properties, and does not interfere with the vision of motorists along adjacent **streets**. Lighting of **buildings** or **structures** shall be minimized to reduce light pollution and preserve the character of the **Township**.

- L. All loading and unloading areas, outside storage areas, and areas for the storage of trash which are visible from **Residential Districts** or public streets, shall be screened by a vertical screen consisting of structural or plant materials no less than six (6) feet in **height**.
- M. Entrances and exits shall be provided at appropriate locations so as to maximize the convenience and safety for persons entering or leaving the site. The number of entrances to and exits from the site shall be determined with reference to the number of dwelling units or other land uses within the site, the nature and location of the surrounding **streets**, the effect of traffic in the area, nearby topography, and other factors.
- N. Site plans shall conform to all applicable requirements of County, State, Federal, and Township statutes and ordinances. Approval may be conditioned on the applicant receiving necessary County, State, Federal, and Township permits before site plan approval or an occupancy permit is granted.
- O. Appropriate fencing may be required by the **Planning Commission** around the boundaries of the development if deemed necessary to minimize or prevent trespassing or other adverse effects on adjacent lands.
- P. The general purposes and spirit of this Ordinance and the **Master Plan** of Niles Charter Township shall be maintained.

SECTION 19.09**CONDITIONS OF APPROVAL**

- A. As part of an approval to any site plan, the **Planning Commission** may impose any additional conditions or limitations as in their judgment may be necessary for protection of the public interest.
- B. Such conditions shall be related to and ensure that the review standards of this Chapter are met and shall meet the requirements of the Zoning Act.
- C. Approval of a site plan, including conditions made as part of the approval, shall apply to the property described as part of the application and to all subsequent owners.
- D. A record of conditions shall be maintained. The conditions shall remain unchanged unless an amendment to the site plan is approved in accordance with this Ordinance.
- E. A record of the decision of the **Planning Commission**, the reason for the decision reached, and any conditions attached to such decision shall be kept and made a part of the minutes of the **Planning Commission**.
- F. The **Zoning Administrator** may make periodic inspections of developments for which site plans have been approved. Non-compliance with the requirements and conditions of the approved site plan shall be considered violations of this Ordinance.

SECTION 19.10
APPEAL

- A. If any person shall be aggrieved by the action of the **Planning Commission**, an appeal in writing may be submitted to the **Township Zoning Board of Appeals**, in accordance with the provision of Section 22.07, within twenty-one (21) days after the date of such action. The **Board of Appeals** shall fix a time and place for a public hearing which shall be published in a newspaper prior to the hearing. All interested parties shall be afforded the opportunity to be heard.
- B. After such hearing, the **Zoning Board of Appeals** shall affirm or reverse the action of the **Planning Commission**, stating its findings and the reasons for its action and a written copy of such findings, reasons, and action shall be given to the appellant.

CHAPTER 20

PARKING REQUIREMENTS

SECTION 20.01

SCOPE - OFF-STREET PARKING

In all **Zoning Districts**, off-street parking facilities for the storage and parking of self-propelled motor vehicles for the use of occupants, employees, and patrons of **buildings** erected, altered, or extended after the effective date of this Ordinance, shall be provided as outlined in this Chapter. Such space shall be maintained and shall not be encroached upon so long as said **building** or **structure** remains, unless an equivalent number of such spaces are provided elsewhere in conformance with this Ordinance.

SECTION 20.02

LOCATION OF PARKING

The off-street parking required by this Chapter shall be provided in accordance with the following requirements:

- A. **Single and Two Family Dwellings.** The off-street parking facilities required for **single** and **two family dwellings** shall be located on the same **lot** or parcel of land as the **building** they are intended to serve, but shall not be considered a **parking lot** under the provisions of this Chapter.
- B. **Multiple Dwellings.** The off-street parking facilities for **multiple family dwellings** shall be located on the same **lot** or parcel of land as the **dwellings** they are intended to serve, and shall consist of a **parking lot** as defined in this Ordinance. In no event shall any uncovered **parking space** for any **multiple family dwelling** be located nearer than ten (10) feet to any **main building**.
- C. **Manufactured Housing Communities.** The off-street parking required may be located on each **manufactured home** site, or in **parking lots** conveniently located and readily accessible to each site. **Parking spaces** must meet the minimum area requirements as outlined in this Chapter.
- D. **Other Land Uses.** The off-street parking required may be located on each site or in **parking lots** within three hundred (300) feet of and readily accessible to each site.

SECTION 20.03

PARKING LOT REQUIREMENTS

- A. All parking facilities, access driveways, and business and industrial parking areas shall be constructed of a permanent, durable and dust-free surface. Such facilities shall be graded and drained so as to dispose of surface water which might accumulate within or upon such area, and shall be completely constructed prior to a Certificate of Occupancy being issued, or a performance guarantee submitted in accordance with the procedures of Section 23.05.
- B. In all **Zoning Districts**, the pavement surfacing of the portion of any driveway between the right-of-way, and the edge of the roadway surface shall be hard surfaced with a pavement having an asphalt or concrete binder, if the roadway is also hard surfaced with a pavement having an asphalt or concrete binder.

- C. Illumination for all **parking lots** in Business and Industrial Districts, non-residential uses, and **multiple family** developments shall be deflected away from adjacent **Residential Districts** and uses.
1. The source of illumination in all **parking lots** abutting a **Residential District** or use shall not be higher than twenty-five (25) feet above the **parking lot** surface.
 2. No **parking lot** shall be illuminated by means of lighting attached to **buildings** or other **structures** that permit light to be directed horizontally.
 3. Lighting of parking areas shall be minimized to reduce light pollution and preserve the character of the **Township**.
- D. When a non-residential **parking lot** is situated on a parcel which adjoins, or is directly across a roadway from a **Residential District**, the **parking lot** shall be set back twenty-five (25) feet excluding any parking or drives, from the property line or right-of way line, unless a greater **setback** is required by any other provision of this Ordinance. Such yard shall contain a greenbelt, as specified in Section 3.12, abutting the parking lot and designed to effectively screen the parking from neighboring **Residential districts** and uses.
- E. Adequate ingress and egress to the **parking lot**, by means of limited and clearly defined drives, shall be provided for all vehicles. Such drives shall be located so as to minimize traffic conflicts with adjoining uses and roadways.
- F. Wheel stops shall be provided and so located as to prevent any vehicle from projecting over the **lot** or **setback** lines, or over a sidewalk. Such devices shall be securely anchored into the **parking lot** to ensure that they remain stationary.
- G. Plans for the layout of off-street parking facilities shall be in accordance with the **parking space** dimensions of this Ordinance. The minimum parking space dimensions for a layout not provided for in the regulations shall be ten (10) feet in width, twenty (20) feet in length, and two hundred (200) square feet in area.

Parking Pattern	Aisle Width		Parking Space		Total Width ³	
	2 way	1 Way	Width ¹	Length ²	1 Way	2 Way
Parallel	18 ft.	12 ft.	10 ft.	25 ft.	30 ft.	36 ft.
30-75%	24 ft.	12 ft.	10 ft.	21 ft.	48 ft.	60 ft.
76-90%	24 ft.	15 ft.	10 ft.	20ft.	55 ft.	64 ft.

1 Measured perpendicular to the longitudinal space centerline.

2 Measured along the longitudinal space centerline.

3 Total width of two tiers of parking maneuvering lane

Parking Space Dimensions

The diagram illustrates the parking space dimensions. It shows a rectangular area with a width of 10ft and a length of 20ft. A dashed line indicates the total width of two tiers of parking, which is 64ft. The diagram also shows the spacing between the tiers, which is 24ft.

SECTION 20.04

PARKING LOT PLANS

- A. The construction of any **parking lot** shall be in accordance with the requirements of the provisions of this Ordinance. Such construction shall be completed and approved by the **Zoning Administrator** before actual use of the property as a **parking lot**, and before a Certificate of Occupancy is issued.

- B. Plans for the development of any **parking lot** must be submitted and approved, in conformance with the site plan review requirements of Chapter 19.

SECTION 20.05

PARKING RESTRICTIONS

- A. In any **District**, it shall be unlawful to use required off-street parking areas for the storage or parking of vehicles in excess of twenty four (24) hours, except as may be permitted for a **business** use.
- B. It shall be unlawful for any person to park or store any motor vehicle without the express written consent of the owner, holder, occupant, lessee, agent, or trustee of such property. In no case shall vehicles be parked in any required off-street **parking lot** for the sole purpose of displaying such vehicle for sale, except in approved and licensed car sales lots.
- C. Parking Restrictions
1. After the effective date of this Ordinance it shall be unlawful for the owner, holder, occupant, lessee, agent, or trustee of any **lot** in the R-1A, R-1B, R-2, or R-3 Residential Districts to permit or allow the open storage or parking, either day or night, thereon of trucks (over one (1) ton), semi-trucks and trailers, **manufactured homes**, construction equipment, or any other similar equipment or machinery used for business purposes.
 2. In all other Districts such parking shall be permitted for a period not exceeding forty eight (48) hours. However, the owner, tenant, or lessee of a **farm** may openly store the machinery and equipment used on his **farm**; and equipment necessary to be parked overnight on a **lot**, parcel or tract of land during construction work thereon shall be exempted from this restriction.
- D. No vehicle storage or display shall be permitted within any road right-of-way. On-street parking is permitted in locations specifically designated by public authority for on-street parking. On-street **parking spaces** shall not be counted toward the required parking for any use.

SECTION 20.06

OFF-STREET PARKING REQUIREMENTS

- A. Required off-street **parking spaces** are noted in the table below for the uses listed. For those uses not specifically mentioned, the requirements for off-street parking shall be in accord with a use which the **Zoning Administrator** considers similar in type.
- B. When units of measurement determining the number of required off-street **parking spaces** result in the requirement of a fractional space that fraction shall require one (1) **parking space**.
- C. The **Planning Commission** may defer construction of a portion of the required number of **parking spaces** for nonresidential uses if the following conditions are met:
1. Areas shown for deferred parking shall be shown on a site plan and shall be of sufficient area to permit the construction of the total number of **parking spaces** required by this Chapter. Such areas shall not be used for any other purpose required by this Ordinance and shall be kept open. Deferred parking areas, however, shall be landscaped and appropriately maintained until such time as they may be converted to parking.
 2. Alterations to the deferred parking area to add **parking spaces** may be initiated by the

owner or required by the **Zoning Administrator** based on parking needs and shall require the submission and approval of an amended site plan, as required by Chapter 19.

USE	PARKING SPACE PER UNIT OF MEASUREMENT
Residential	
Assisted living, nursing homes	One (1) for each four (4) beds
Multiple family dwellings	Two (2) for each dwelling unit
Senior independent living	One (1) for each dwelling unit
Single family dwellings	Two (2) for each dwelling unit
Two family dwellings	Two (2) for each dwelling unit
Institutional	
Churches, theaters, assembly areas, auditoriums, gymnasiums	One (1) space for each three (3) seats or each six (6) feet of pew/bench length or one (1) space for each three (3) persons allowed within the maximum occupancy load established by any applicable codes or ordinances, whichever is greater
Day care center	One (1) space per each four (4) persons, based on licensed capacity; plus six (6) off-street queuing spaces
Group day care homes and group foster care homes	One (1) space for each four (4) clients
Hospitals	Two (2) spaces per bed
Libraries and museums	One (1) space per four hundred (400) square feet of UFA
Schools, elementary and middle	One (1) space per classroom, plus amount required for auditorium or gymnasium seating
Schools, secondary, trade, industrial, and institutions of higher learning	One (1) space for each eight (8) students based on maximum occupancy load established by local, state, or fire code; plus one (1) space for each classroom; plus amount required for auditorium or gymnasium seating
Business	
Animal hospitals and kennels	One (1) space per four hundred (400) square feet GFA
Beauty/barber shop	Three (3) spaces for each chair
Bowling alleys	Four (4) spaces for each bowling lane plus required spaces for each accessory use
Funeral homes and mortuary establishments	One (1) space for each fifty (50) square feet UFA
Furniture, appliance and household goods retail sales	One (1) space for each eight hundred (800) square feet UFA

Hotels and motels	One (1) space for each guest room, plus required spaces for any accessory uses
Open air businesses	One (1) space for each two hundred (200) square feet of indoor UFA plus one (1) space for each one thousand (1000) square feet of outdoor display area
Personal service establishments not otherwise specified	One (1) space for each three hundred (300) square feet UFA
Restaurants and other establishments (without drive-through facilities) serving food or beverages on the premises	One (1) space for each one hundred (100) square feet GFA or one (1) space for each three (3) persons allowed within the maximum occupancy load established by any applicable codes or ordinances, whichever is greater
Restaurants with drive-through facilities	One (1) space for each seventy-five (75) square feet of GFA or one (1) space for each one and one-half (1½) persons allowed within the maximum occupancy load established by any applicable codes or ordinances, whichever is greater
Retail stores not otherwise specified	One (1) space for each two hundred (200) square feet GFA
Vehicle wash establishments (self service)	One (1) space: plus two (2) spaces for each stall, in addition to the stall itself
Vehicle wash establishments (automatic)	Three (3) spaces per one thousand (1,000) square feet of GFA; plus stacking space, as required for special use approval
Vehicle service stations	One (1) space for each service stall; plus two (2) spaces for each pump island; plus requirement for retail, restaurant, car wash or other accessory uses
Video rental stores	One (1) space for each one hundred (100) square feet UFA
Offices	
Banks, credit unions, savings and loan associations and other similar uses	One (1) space for each one hundred and fifty (150) square feet UFA; plus three (3) spaces for each non-drive through automatic teller machine; plus stacking space as required for special use approval
Medical and dental offices and clinics	One (1) space for each seventy five (75) square feet of waiting room area; plus three (3) spaces for each examining room, dental chair, or similar use area
Offices not otherwise specified	One (1) space for each three hundred (300) square feet UFA
Industrial	
Manufacturing, processing, and research establishments and Industrial uses not otherwise specified	One (1) space for each seven hundred fifty (750) square feet GFA; plus those spaces required for offices located on the premises
Warehouses and wholesale establishments	One (1) space for each two thousand (2000) square feet GFA plus; those spaces required for offices located on the premises

SECTION 20.07**OFF-STREET LOADING REQUIREMENTS**

- A. On the same premises with every **building** or **structure** involving the receipt or distribution of vehicles, materials or merchandise there shall be provided and maintained on the **lot** adequate space for standing, loading and unloading. This space shall be placed so as to avoid undue interference with public use of dedicated rights-of-way and parking areas.
- B. In the Business Districts, all loading spaces shall be located in the **rear yard** in the ratio of at least ten (10) square feet per front foot of **building** and shall be computed separately from off-street parking requirements.
- C. Loading spaces for non-residential uses in **Residential Districts** shall be located in the **rear yard** in the ratio of at least five (5) square feet per front foot of **building** and shall be computed separately from off-street parking requirements.
- D. Industrial District
 - 1. In the I District at least one (1) loading space shall be provided. All loading spaces shall be at least ten feet by fifty feet (10 x 50), or a minimum of five hundred (500) square feet in area. A minimum fourteen (14) foot clearance height shall be provided.
 - 2. Loading spaces shall only be permitted off-street and in the **rear yard** or interior **side yard**.
- D. All dedicated loading spaces shall be provided with a pavement having an asphalt or concrete binder so as to provide a permanent, durable and dustless surface.

CHAPTER 21

SIGN REQUIREMENTS

SECTION 21.01

SIGNS - DESCRIPTION AND PURPOSE

The sign regulations of this Chapter are intended to protect and further the health, safety, and welfare of the residents of Niles Charter Township; to maintain and improve the appearance of the Township; to conserve community character; to prevent traffic hazards; to provide safer conditions for pedestrians; and to promote economic development by regulating the construction, alteration, repair, maintenance, size, location, and number of signs. It is further determined that to allow signs of excessive number and size in the Township would unduly distract pedestrians and motorists, create a traffic hazard, and reduce the effectiveness of signs needed to direct the public. These regulations are intended to provide reasonable identification of businesses and other uses within the community, but are not intended to serve as a means of advertising.

SECTION 21.02

SIGNS - DEFINITIONS

For the purposes of the provisions of this Chapter related to **signs**, the following words and phrases are defined as follows:

- A. **Billboard:** Any structure, including the wall of any building, on which lettered, figured, or pictorial matter is displayed for advertising a business, service, or entertainment that is not conducted on the land upon which the structure is located or products not primarily sold, manufactured, processed, or fabricated on such land.
- B. **Business Center:** Any two (2) or more businesses which:
 - 1. are located on a single parcel of property; or
 - 2. are connected by common walls, partitions, canopies, or other structural members to form a continuous building or group of buildings; or
 - 3. are under one (1) common ownership or management and have a common arrangement for the maintenance of the grounds; or
 - 4. share a common parking area; or
 - 5. otherwise present the appearance of a single, contiguous business area.
- C. **Business Center Sign:** A freestanding or ground sign identifying the name of a Business Center and/or one (1) or more individual businesses within the center.
- D. **Community Special Event Sign:** A portable sign erected for a limited time for the purpose of calling attention to events of interest to the general public and which are sponsored by governmental agencies, schools, or other non-profit groups whose purpose is of a public, charitable, philanthropic, religious or benevolent nature.
- E. **Construction Sign:** A **sign** identifying the owners, contractors, architects, and engineers of a building(s) or development project under construction.

- F. Directional Sign: A **sign** which gives directions, instruction, or information relating to location of **buildings**, designated routes for pedestrians and vehicles and other information for convenience or safety, such as parking information signs or entrance and exit **signs**.
- G. Freestanding Sign: A **sign** not attached to a building or wall and which is supported by one (1) or more poles or braces with a minimum ground clearance of eight (8) feet.
- H. Governmental Sign: A **sign** erected or required to be erected by the Township, Berrien County, or by the state or federal government.
- I. Ground Sign: A **sign**, the bottom of which is no more than twenty-four (24) inches from the ground, which rests directly on the ground, or is supported by short poles or a base, and is not attached to a building or wall.
- J. Incidental Sign: A **sign**, as determined by the **Zoning Administrator**, that identifies street address, entrances and exits, safety precautions, identifying logos without text, and other such incidental information, which is not generally intended for business advertisement or which is not intended to be read from the street.
- K. Memorial **Sign**: A **sign**, tablet, or plaque memorializing a person, event, structure, or site.
- L. Political **Sign**: A **sign** erected for a limited period of time for purposes of political campaigns for public office, for elections on public questions, or otherwise relating to public elections or public meetings held for the purpose of voting on or for public offices or public questions.
- M. Projecting **Sign**: A **sign** that projects from and is supported by a wall of a building and does not extend beyond or into and over street right-of-way.
- N. Real Estate **Sign**: A **sign** advertising the real estate upon which the sign is located as being available for sale, rent, or lease.
- O. Real Estate Development **Sign**: A **sign** located on a portion of a platted subdivision or site condominium approved in accordance with the Land Division Act and which promotes the sale of lots or sites within such development.
- P. Roof Sign: Any **sign** erected above the roof line of a building.
- Q. **Sign**: A device, structure, fixture, or placard using graphics, symbols and written copy designed specifically for the purpose of identifying an establishment, product, service, commodity, or activity, or displaying or depicting other information.
- R. Subdivision Identification **Sign**: A **sign** identifying or otherwise stating the name of a platted subdivision, site condominium development, apartment complex, **manufactured housing community**, or other residential development.
- S. Temporary **Sign**: A display, informational sign, banner or other advertising device with or without a structural frame and intended for a limited period of display, including seasonal produce sales and decorative displays for holidays, or public demonstrations.
- T. Wall Sign: A **sign** attached directly to and parallel to the exterior wall of a **building**, extending not greater than twelve (12) inches from the exterior face of the wall to which it is attached.

SECTION 21.03
SIGNS PROHIBITED

The following types of **signs** are expressly prohibited:

- A. Any **sign** that has flashing, moving, oscillating, or blinking lights, excluding time and temperature signs and barber pole signs, which are permitted.
- B. **Signs** imitating or resembling official traffic or **governmental signs** or signals.
- C. Any **sign** not expressly permitted by this Ordinance.
- D. Balloons, strings of light bulbs, pennants, streamers, or flags (other than those of a governmental nature not used for the purpose of business advertisement or attraction) hung overhead to draw attention to a business or its merchandise on display.
- E. Signs painted on any exterior wall of a building.
- F. No business vehicle, which in the opinion of the **Zoning Administrator** has the intended function of acting as a **sign**, shall be parked in any area abutting the **street**, unless no other parking area is available.

SECTION 21.04
SIGNS EXEMPTED

The following signs shall be exempt from the provisions of this Chapter.

- A. Governmental **signs**, on government property.
- B. **Signs** for **essential services**.
- C. Historical markers.
- D. Memorial signs or tablets.
- E. **Political signs**, except that such **signs** shall be removed within the time stated in Section 21.07.
- F. **Signs** with an address and name of the owner or occupant, of not more than one (1) square foot in area, attached to a mailbox, light fixture, or exterior wall.
- G. Temporary yard and garage sale signs of four (4) square feet in size or less, located on the property on which the sale is conducted. Temporary yard and garage sale signs may not be placed any earlier than five (5) days before the sale to which they refer and must be removed within one (1) day after the sale is completed.
- H. Window **signs** provided the total area of all signs within one (1) foot of the window shall not obscure more than fifty (50) percent of the window area.
- I. Flags or insignia of any nation, state, local government, community organization, or educational institution.

SECTION 21.05**MEASUREMENT OF SIGNS**

- A. The area of a **sign** shall be measured as the area within a single, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of writing, representation, emblem, logo and any other figure of similar character. The **sign** area shall also include any frame or other material or color forming an integral part of the display or used to differentiate the **sign** from the background against which it is placed. Only the structure necessary to support the **sign**, shall be excluded from the **sign** area calculation.
- B. The area of a free-standing or ground **sign** having two (2) or more faces shall be measured by including the area of all **sign** faces. However, if two (2) such faces are placed back to back and are of equal size, the area of the **sign** shall be considered to be the area of one (1) face. If the two (2) back to back faces are of unequal size, the area of **sign** shall be considered to be the area of the larger of the two (2) faces.
- C. The **height** of a **sign** shall be measured as the vertical distance from the highest point of the **sign** to the grade of the adjacent **street**, or the **average grade** of the ground immediately beneath the **sign** (excluding any artificially constructed earthen berms), whichever is less.
- D. For buildings with multiple tenants, the sign areas for **wall signs** and **projecting signs** shall be determined by taking that portion of the front wall of the building applicable to each tenant and computing **sign** requirements for that portion of the total wall.

SECTION 21.06**SIGN APPLICATION AND PERMITS**

- A. A **sign** permit shall be required for the erection, use, construction or alteration of all **signs**, except for those exempted by the terms of this Chapter. For purposes of this Section, alteration of a **sign** shall mean any substantial change therein, but shall not include normal maintenance or repair thereof.
- B. An application for a **sign** permit shall be made to the **Zoning Administrator**, and shall include submission of such fee as established by the **Township Board**. The application shall include the following:
 - 1. Name, address, and telephone number of the applicant, and the person, firm, or corporation erecting the **sign**.
 - 2. Address and permanent parcel number of the property where the **sign** will be located.
 - 3. A sketch showing the location of the **building, structure**, or parcel of land upon which the **sign** is to be attached or erected, and showing the proposed **sign** in relation to **buildings and structures, setback from lot lines**, and any trees or other natural features proposed to be removed for the installation of the **sign**.
 - 4. Two (2) scaled drawings of the plans and specifications for the **sign** and information on the method of construction and attachment to structures or the ground.
 - 5. Any application for building or electrical permits, if required.
 - 6. Identification of the **Zoning District** in which the **sign** is to be located, and any other information which the **Zoning Administrator** may require in order to determine compliance with this Chapter.

- C. All **signs** requiring electrical service shall be reviewed for compliance with the Township electrical code.
- D. The **Zoning Administrator** shall issue a **sign** permit if all provisions of this Chapter and other provisions of this Ordinance and other applicable **Township** ordinances are satisfied. A **sign** authorized by such a permit shall be installed or shall be under construction within six (6) months of the date of issuance of the **sign** permit, or the permit shall expire. A new permit may be issued upon the filing of a new application and payment of the required fee.

SECTION 21.07**SIGN REGULATIONS APPLICABLE TO ALL DISTRICTS**

- A. It shall be unlawful for any person to erect, place, maintain, or continue a **sign** upon any lands in the **Township** except in accordance with the provisions of this Ordinance.
- B. All **signs** shall be stationary, securely anchored or fastened to the ground or structure and shall be designed and constructed to withstand a 90 mile per hour ground wind load.
- C. **Signs** shall pertain only to the business or activity conducted on the premises, except for **political signs, community special event signs, and billboards**.
- D. **Real estate signs** shall not exceed six (6) square feet and be removed within thirty (30) days after completion of the sale or lease of the property.
- E. **Political signs** shall not exceed thirty-two (32) square feet. **Political signs** may only be placed within thirty (30) days before and must be removed within five (5) days after the election or referendum to which the **sign** refers.
- F. No **sign** shall be placed in, or extend into, or obstruct clear vision in any public right-of-way.
- G. **Construction signs** are permitted subject to the following restrictions:
 - 1. One (1) **construction sign** may be erected on the site where work is scheduled to begin
 - 2. **Construction signs** shall not be larger than thirty two (32) square feet and shall not exceed eight (8) feet in **height**.
 - 3. **Construction signs** shall not be erected until a building permit has been issued for the **building** or project which is the subject of the proposed **sign** and construction activity has begun.
 - 4. **Construction signs** shall be removed within fifteen (15) days after the issuance of any occupancy permit for the **building** or **structure** which is the subject of the construction **sign**.
- H. **Community special event signs** shall not exceed sixteen (16) square feet and may be permitted for a period not to exceed thirty (30) days. No more than five (5) such **signs** shall be permitted for any single event. Such **signs** shall be removed within two (2) days of the end of the event.
- I. **Directional signs** shall not exceed four (4) square feet in area per **sign**, shall not be higher than three (3) feet., and shall not be located closer than five (5) feet to any right-of-way line.
- J. No **wall sign** shall project above the roof line.

- K. **Temporary Signs** are permitted subject to the following restrictions:
1. A temporary sign shall only be displayed upon receipt of a permit issued by the Zoning Administrator.
 2. No temporary sign shall be displayed on any one (1) lot or parcel for more than thirty (30) consecutive days for any one permit period and no more than two (2) permits shall be issued for any lot or parcel during any calendar year.
 3. Upon expiration of the permit, the sign shall be removed by the permit holder.
 4. No temporary sign shall exceed thirty-two (32) square feet.
 5. No temporary sign shall be closer than five (5) feet from any right-of-way or property line.
 6. All temporary signs shall be designed and constructed to withstand a wind pressure of not less than thirty (30) pounds per square foot of area.
- L. Flashing and intermittently illuminated **signs** are prohibited. If externally illuminated, the source of the light shall be enclosed and directed to prevent light from shining directly onto traffic and neighboring property.
- M. **Incidental signs** pertaining to any conforming accessory activity being conducted on the premises are permitted in any **District**; provided only one (1) such sign shall be permitted, shall be mounted flat against a building wall, and shall not exceed three (3) square feet in area.
- N. No **sign** shall be erected where, in the judgment of the **Planning Commission** or **Zoning Administrator**, an unreasonable amount of land clearing or alteration is required. The **Planning Commission** or **Zoning Administrator** may require a change in the location to avoid such unnecessary or unreasonable clearing or alteration.
- O. **Freestanding signs** shall have a clear space of at least eight (8) feet between the grade and the bottom of the sign to permit an unobstructed view for motorists and pedestrians.
- P. **Real Estate Development signs** are permitted subject to the following restrictions:
1. Such sign shall not exceed an area of one hundred (100) square feet.
 2. It shall be set back from the road right-of-way at least one-half (1/2) the required setback distance for the district in which it is located
 3. It shall be located on some portion of the development being advertised for sale.
 4. It shall be removed upon the sale of all lots or sites within the development.

SECTION 21.08**NONCONFORMING SIGNS**

- A. Every permanent **sign** in existence at the time of adoption of this Ordinance which does not conform to the **height**, size, area, or location requirements of this Chapter, but which legally conformed to the previous zoning ordinance, is deemed to be nonconforming.
- B. Nonconforming **signs** may not be expanded, enlarged, or extended, but they may be maintained and repaired so as to continue their useful life.
- C. A nonconforming **sign** may be diminished in size or dimension, or the copy on the **sign** may be amended or changed, without adversely affecting the status of the **sign** as a nonconforming **sign**.

- D. Notwithstanding any other provision of this Ordinance, any non-conforming **sign** in existence in any **Residential District** at the date of enactment of this Ordinance shall, at the expiration of two (2) years from such date, become a prohibited and unlawful use and shall be discontinued.

SECTION 21.09 SIGNS IN RESIDENTIAL DISTRICTS

In addition to the requirements in Section 21.07, the following **signs** are permitted in **Residential Districts**:

AP, RP, R-1A, R-1B, R-2, R-3 Districts	
Subdivision identification sign	
Number	One (1) non-illuminated per entrance road subdivision development, not exceeding two (2) such signs per development
Size	Thirty-two (32) square feet
Location	Setback minimum of fifteen (15) feet from any right-of-way or property line
Height	Maximum six (6) feet.
Signs for non-residential uses in Residential Districts	
Number	One (1) ground sign and one (1) wall sign per lot or parcel (illuminated).
Size	Ground sign: maximum thirty-two (32) square feet; wall sign: ten (10) percent of wall area, not exceeding fifty (50) square feet
Location	Ground sign setback minimum fifteen (15) feet from any right-of-way or property line.
Height	Ground sign: maximum six (6) feet.
Wall signs for home occupations	
Number	One (1) per lot or parcel
Size	Maximum one (1) square foot
Location	Mounted flat against the wall and non-illuminated
Signs indicating sale of produce grown on the premises or providing agricultural information	
Number	One (1) non-illuminated sign per parcel
Size	Twelve (12) square feet
Location	Minimum setback of fifteen (15) feet from any right-of-way or property line
Height	Maximum four (4) feet

SECTION 21.10 SIGNS IN BUSINESS AND INDUSTRIAL DISTRICTS

In addition to the requirements in Section 21.07, the following **signs** are permitted in the Business Districts:

OS District	
Ground Sign	
Number	One (1) per lot or parcel
Size	Maximum forty-eight (48) square feet
Location	Minimum setback equal to half the required setback distance for the District.
Height	Maximum four (4) feet above grade
Wall Signs	
Number	One (1) per business; provided that any business which has frontage on more than one (1)

OS District	
	street shall be permitted to have one (1) wall sign per street frontage, subject to the following size restrictions.
Size	No greater than ten (10) percent of the ground floor wall area to which it is affixed on the front and no greater than five (5) percent of the ground floor wall area on any side or rear face which abuts a street, not to exceed thirty (30) square feet per sign . Where two (2) or more businesses occupy a single building, the ground floor wall area shall be limited to that portion of the building occupied by the respective business.
Location	Mounted flat against the wall facing the street.

LB, GB, HB Districts	
Ground Sign or Freestanding Sign	
Number	One (1) per street frontage, but not more than two (2) signs, provided that lots with two street frontages shall have a minimum width at each right-of-way line of at least fifty (50) feet in order to have a second sign. No freestanding or ground sign shall be permitted for individual businesses within a Business Center .
Size	Maximum forty-eight (48) square feet for ground signs or sixty (60) square feet for freestanding.
Location	Minimum setback equal to half the required setback distance for the District.
Height	Maximum six (6) feet for ground sign or twenty-five feet for freestanding
Wall Signs	
Number	One (1) per business; provided any business with frontage on more than one (1) street may have one (1) sign per street frontage, subject to the size restrictions stated herein. No more than one (1) sign shall be permitted per wall face.
Size	Maximum ten (10) percent of the wall area to which it is affixed, not exceeding one hundred (100) square feet.
Location	Mounted flat against the wall facing the street.
Business Center Sign	
Number	One (1) per street frontage, but not more than two (2) signs , provided that lots with two street frontages shall have a minimum width at each right-of-way line of at least seventy-five (75) feet in order to have a second sign. No freestanding or ground sign shall be permitted for individual businesses within a Business Center .
Size	Maximum sixty (60) square feet for ground signs or eighty (80) square feet for freestanding signs
Location	Minimum setback equal to half the required setback distance for the District
Height	Maximum six (6) feet for ground sign or twenty-five (25) feet for freestanding.
Billboard (within the GB and HB Districts only)	
Number	One (1) per parcel
Size	Maximum four hundred (400) square feet provided the vertical dimension shall not exceed twelve (12) feet and the horizontal dimension shall not exceed forty-two (42) feet.
Location	Minimum setback equal to the required setback distance for the District and a minimum separation from any other billboard of one thousand (1,000) feet.
Height	Maximum forty (40) feet.

In addition to the requirements in Section 21.07, the following **signs** are permitted in the Industrial District:

I, Industrial District	
Ground Sign (no freestanding signs are permitted)	
Number	One (1) per lot or parcel
Size	Maximum forty-eight (48) square feet
Location	Minimum setback fifteen (15) feet from any right-of-way or property line
Height	Maximum six (6) feet
Wall Sign	
Number	One (1) per street frontage
Size	Maximum ten (10) percent of wall area to which the sign is affixed, not exceeding one hundred (100) square feet
Location	Mounted flat against wall facing street
Billboard	
Number	One (1) per parcel
Size	Maximum four hundred (400) square feet provided the vertical dimension shall not exceed twelve (12) feet and the horizontal dimension shall not exceed forty-two (42) feet.
Location	Minimum setback equal to the required setback distance for the District and a minimum separation from any other billboard of one thousand (1,000) feet.
Height	Maximum forty (40) feet.

CHAPTER 22

ZONING BOARD OF APPEALS

SECTION 22.01

AUTHORIZATION

In order that the objectives of the Ordinance may be more fully and equitably achieved, that there shall be provided a means of competent interpretation of this Ordinance, that adequate but controlled flexibility be provided in the application of this Ordinance, that the health, safety, and welfare of the public be secured, and that justice be done, there is hereby established a Township **Zoning Board of Appeals (ZBA)**.

SECTION 22.02

MEMBERSHIP - TERMS OF OFFICE

- A. The Township **ZBA** shall consist of five (5) members.
1. The first member of the **ZBA** shall be a member of the **Township Planning Commission**; the second member may be a member of the **Township Board** but shall not serve as chairperson of the **ZBA**; the additional members shall be selected from the electors residing in the **Township**.
 2. All members shall be appointed by the **Township Board**. The additional members shall not be elected officers of the **Township** or employees of the **Township Board**. The additional members shall be appointed for three (3) year terms.
 3. The **Planning Commission** and **Township Board** representatives, who shall not be the same member, shall only serve on the **ZBA**, while holding office on those respective bodies.
- B. The **Township Board** may appoint up to two (2) alternate members with the same qualifications as regular members for the same terms as the regular members.
1. An alternate may be called to serve as a regular member:
 - a. in the absence of a regular member if the regular will be unable to attend one (1) or more meetings; and
 - b. for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest.
 2. The alternate member shall serve in the case until a final decision is made, and shall have the same voting rights as a regular member.
- C. A member of the **ZBA** may be removed by the **Township Board** for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- D. Any vacancies in the **ZBA** shall be filled by appointment by the **Township Board** not more than one (1) month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.

SECTION 22.03
DUTIES AND POWERS

The **Township ZBA** shall have the following specified duties and powers:

- A. **Appeals.** The **ZBA** shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the **Zoning Administrator** or other administrative officer or body of the **Township** in the administration and enforcement of this Ordinance.
- B. **Interpretation.** The **ZBA** shall have the power to:
 - 1. Hear and decide upon requests for the interpretation of the provisions of this Ordinance; and
 - 2. Determine the precise location of boundary lines between **Zoning Districts** upon appeal from a decision by the **Zoning Administrator**.
- C. **Variances.** The **ZBA** shall have the power to authorize specific variances from the requirements of this Ordinance.
- D. The **ZBA** shall not have the authority to hear or act upon any request for a use variance within a **Zoning District**.
- E. The **ZBA** shall not have the authority to approve any sign type which is not permitted within a **Zoning District**.

SECTION 22.04
MEETINGS

Meetings shall be open to the public, and shall be held at the call of the Chairman, and at other times as the **ZBA** shall specify in its rules of procedure.

SECTION 22.05
APPLICATIONS AND HEARINGS

- A. An application to the **ZBA** shall consist of:
 - 1. A completed application form, provided by the **Township**,
 - 2. A fee as established by the **Township Board**, paid to the **Township** Clerk at the time of filing, and
 - 3. A scaled drawing, a minimum of eleven inches by seventeen inches (11" x 17") with sufficient detail to indicate the nature and necessity of the request.
 - 4. The **ZBA** or the **Zoning Administrator** may request additional detail on the drawing or other information which they deem necessary to make a decision on the application.
- B. Upon receipt of a complete application at least thirty (30) days prior to the meeting at which the request will be heard, the **Zoning Administrator** shall publish a notice as follows:
 - 1. The notice of public hearing for a variance request shall be published in a newspaper that circulates in the **Township**. The notice shall also be sent by mail or personal delivery to

- the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.
2. The notice shall be published in the newspaper and sent to recipients not less than 15 days before the date the application will be considered for approval.
 3. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
 4. The notice shall:
 - a) Describe the nature of the request.
 - b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 - c) State when and where the request will be considered.
 - d) Indicate when and where written comments will be received concerning the request.
- C. Upon receipt of a written request seeking an interpretation of the Zoning Ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper that circulates in the Township and shall be sent to the person requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.
- D. At the hearing, a party may appear in person or by agent or attorney. The ZBA may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.
- E. The **ZBA** may recess the hearings from time to time, and no further notice shall be required.

SECTION 22.06

DECISIONS

- A. The concurring vote of a majority of the full membership of the **ZBA** shall be necessary to reverse any order, requirement, decision, or determination of the **Zoning Administrator**; to decide in favor of any application on any matter upon which the **ZBA** is required to pass under this Ordinance; or to effect any variance in this Ordinance.
- B. The **ZBA** shall return a decision upon each case within a reasonable time after the scheduled hearing has been held. The reasoning supporting its decision shall be documented by stating on the record the grounds and/or findings to support it.

- C. In granting any variance, the **ZBA** may prescribe appropriate and reasonable conditions and safeguards, which shall be in conformity with all of the following requirements:
1. The condition or safeguard must be designed to protect natural resources; the health, safety, and welfare and the social and economic well being of those who will use the land or activity under consideration; residents and landowners immediately adjacent to the proposed activity; and the community as a whole.
 2. The condition or safeguard must be related to the valid exercise of the police power and to the purposes that are affected by the proposed activity.
 3. The condition or safeguard must be necessary to meet the intent and purposes of this Ordinance; be related to the standards established in this Ordinance for the activity under consideration; and be necessary to ensure compliance with those standards.
- D. The **ZBA** may find the immediate effect of the order is necessary for the preservation of property or personal rights; immediate effect shall so be certified on the record.
- E. The decision of the **ZBA** shall be final; however, any person having an interest affected by any decision shall have the right of appeal to the Circuit Court on questions of law and fact.
- F. Each decision entered under the provisions of this Chapter shall become null and void unless the construction or other action authorized by the decision has been started within one (1) year after the decision was made and is being carried forward to completion or occupancy of land, premises, or **buildings**.
- G. No application which has been denied wholly or in part by the **ZBA** shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of changed conditions that would significantly change the nature of the request or affect the reasons for denial first ordered by the **ZBA**.

SECTION 22.07 APPEALS

- A. Appeals to the **ZBA** may be taken by any person aggrieved, or by any officer, department or **Board** of the **Township**.
1. Applications for appeals shall be filed within twenty one (21) days after the date of the decision which is the basis of the appeal. The appellant must file with the **Zoning Administrator** a notice of appeal specifying the nature and grounds for the appeal.
 2. The **Zoning Administrator** shall transmit to the **ZBA** all the papers constituting the record upon which the action appealed from was taken.
- B. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the **Zoning Administrator** certifies to the **ZBA** after the notice of the appeal has been filed with him that, for reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. Proceedings shall not be stayed, unless by a restraining order, which may be granted by the **ZBA** or, on application, by the Circuit Court when due cause can be shown.

SECTION 22.08**REVIEW STANDARDS FOR VARIANCES**

A non-use/dimensional variance may be allowed by the **ZBA** only in cases where there is reasonable evidence presented by the applicant that ALL of the following conditions are met:

- A. Granting the variance will not be contrary to the public interest and will ensure that the spirit of this Ordinance is observed.
- B. Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or in the **district** in which the subject property is located.
- C. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.
- D. That there are practical difficulties in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the vicinity in the same **Zoning District**. Exceptional or extraordinary circumstances or conditions include:
 - 1. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance;
 - 2. Exceptional topographic conditions;
 - 3. By reason of the use or development of the property immediately adjoining the property in question; or
 - 4. Any other physical situation on the land, **building** or **structure** deemed by the **ZBA** to be extraordinary.
- E. That granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same **Zoning District**.
- F. That the variance is not necessitated as a result of any action or inaction of the applicant.
- G. The variance, if granted, would be the minimum departure necessary to afford relief.

CHAPTER 23

ADMINISTRATION AND ENFORCEMENT

SECTION 23.01

REPEAL OF PRIOR ORDINANCE

All Zoning Ordinances previously adopted by the Township, and all amendments thereto, are hereby repealed. The repeal of the above Ordinance and its amendments does not affect or impair any act done, offense committed or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time enforced, prosecuted or inflicted.

SECTION 23.02

INTERPRETATION

- A. In the interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience, or general welfare.
- B. It is not intended by this Ordinance to repeal, abrogate, annul, or in any other way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this Ordinance. Further, it is not intended by this Ordinance to repeal, abrogate, annul, or in any other way impair or interfere with any private restrictions placed upon property by covenant, deed, or other private agreement. However, where any provision of this Ordinance imposes more stringent requirements, regulations, restrictions, or limitations upon the erection or use of land and **buildings**, upon the height of **buildings** and **structures**, upon safety and sanitary measures, or requires larger **yards** or open spaces than are imposed or required by the provisions of any other law or ordinance, or any said rules, regulations, permits, or easements, then the provisions of this Ordinance shall govern.
- C. Nothing in this Ordinance should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, **district**, zoning classification or any permissible activities therein; and they are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of public health, safety, and welfare.

SECTION 23.03

REMEDIES AND ENFORCEMENT

- A. A violation of this Ordinance is a municipal civil infraction, for which the fine shall be in accordance with the following:
 - 1. For violation of the provisions of this Ordinance governing the approval, operation, or maintenance of Special Land Uses in any **Zoning District**:
 - a. First violation: five hundred dollars (\$500.00);
 - b. Second violation within a three (3) year period from the date of the first violation: one thousand dollars (\$1,000.00);
 - c. Third violation within a three (3) year period from the date of the first violation: two thousand dollars (\$2,000.00);

- d. Fourth and any subsequent violations within a three (3) year period from the date of the previous violation: five thousand dollars (\$5,000.00);
 - 2. For violation of any other provision of this Ordinance in any **Zoning District**:
 - a. First violation: fifty dollars (\$50.00);
 - b. Second violation within a three (3) year period from the date of the first violation: one hundred dollars (\$100.00);
 - c. Third violation within a three (3) year period from the date of the first violation: two hundred dollars (\$200.00);
 - d. Fourth and any subsequent violations within a three (3) year period from the date of the previous violation: five hundred dollars (\$500.00);
 - 3. In addition to said fines, the guilty party is subject to all other costs, damages, and expenses provided by law.
- B. Notwithstanding the provisions of this Section, offenses committed on subsequent days within a period of one (1) week following the issuance of a citation for a first offense shall all be considered separate first offenses. Each day during this one week period during which any violation continues shall be deemed a separate offense.

SECTION 23.04**PUBLIC NUISANCE, PER SE**

Any **building** or **structure** which is moved, erected, repaired, altered, or converted, or any use of premises or land which is begun or changed subsequent to the time of passage of this Ordinance, and in violation of any of the provisions thereof, is hereby declared to be a public nuisance per se. The nuisance may be abated by order of any court of competent jurisdiction.

SECTION 23.05**PERFORMANCE GUARANTEES**

- A. The **Zoning Administrator, Planning Commission, Zoning Board of Appeals, and Township Board** are empowered to require a performance guarantee in the form of a bond, cashier's check, cash, or other suitable negotiable security, in an amount equal to the estimated cost of improvements associated with the approval of a site plan review, special land use, or planned unit development project. Such features or components, hereafter referred to as **improvements**, may include, but shall not be limited to, roadways, curbing, landscaping, fencing, walls, screening, lighting, drainage facilities, sidewalks, driveways, utilities, and similar items.
- B. Prior to the issuance of a Zoning Compliance Permit, the applicant shall submit an itemized estimate of the cost of the required improvements which are subject to the performance guarantee, which shall then be reviewed by the **Zoning Administrator**. The amount of the performance guarantee shall be one hundred (100) percent of the cost of purchasing materials and installing the required improvements, plus the cost of necessary engineering and a reasonable amount for contingencies; not to exceed a total amount equal to one hundred twenty-five (125) percent of the project cost.
- C. The performance guarantee shall be deposited with the **Township Clerk**. If said improvements are not completed, the security shall be forfeited, either in whole or in part.

- D. The **Zoning Administrator**, upon the written request of the depositor, shall rebate portions of the performance guarantee upon determination that the improvements for which the rebate has been requested have been satisfactorily completed. The portion of the performance guarantee to be rebated shall be in the same amount as stated in the itemized cost estimate for the applicable improvements.
- E. When all of the required improvements have been completed, the depositor shall send written notice to the **Zoning Administrator** of completion of said improvements. Thereupon, the Zoning Administrator shall inspect all of the improvements and approve, partially approve, or reject the improvements with a statement of the reasons for any rejections. If partial approval is granted, the cost of the improvement rejected shall be set forth. Where partial approval is granted, the depositor shall be released from liability pursuant to relevant portions of the performance guarantee, except for that portion sufficient to secure completion of the improvements not yet approved.
- F. A record of authorized performance guarantees shall be maintained by the **Zoning Administrator**.

SECTION 23.06**ZONING COMPLIANCE PERMITS AND SURVEY REQUIREMENTS**

- A. No permit shall be issued by any municipal, County, Township, state, official, or agency for any use, **building**, construction, work, alteration, addition, or improvement to land, as above described, until a Zoning Compliance Permit has been issued by the **Zoning Administrator** under the terms and provisions of this Ordinance.
- B. The issuance of any other approval or certification of a site plan, variance, special land use permit, planned unit development, or other discretionary permit by any board or body under this Ordinance, shall not supercede or lessen compliance with this Ordinance and that any use, development, construction, improvement or work allowed under the discretionary permit, shall in all cases be further conditioned on compliance with this Ordinance and shall not be allowed until the issuance of the Zoning Compliance Permit in accordance with this Chapter.
- C. An application for a Zoning Compliance Permit shall be signed by the owner of the land, or the owner's duly authorized agent and be accompanied by a site plan, where required under other provisions of this Ordinance, or a drawing, that provides the following information:
1. Scale, date and north point.
 2. Location, shape and dimensions of the lot.
 3. Legal description, tax parcel number and address of the lot.
 4. Location, outline and dimensions of all existing and proposed **structures** and the location and extent of all uses not involving **structures**.
 5. A clear description of existing and intended uses of all **structures**.
 6. Additional information as required by the **Zoning Administrator** for purposes of determining compliance with this Ordinance.
- D. A Zoning Compliance Permit shall be signed and issued by the **Zoning Administrator**.
1. The application and all supporting documentation shall be considered a part of the permit.
 2. Any alteration, false statement, change or other variation between the application and its supporting documents, and the use, construction, work, development, alteration, addition,

- or improvement authorized by the permit, shall render the permit null and void.
3. Any change, variation or alteration of the application and supporting documents, shall require resubmission to the **Zoning Administrator** and the re-issuance of a new Zoning Compliance Permit.
- E. All fees due under this Ordinance, or under other Ordinances or policies of the **Township** for municipal services and development of the work, must be paid in full prior to the issuance of the Zoning Compliance Permit, unless exception is made by the appropriate board authorized to waive or delay the payment of the fees. The applicant shall furnish to the **Zoning Administrator**, upon request, a title insurance policy or other acceptable evidence of ownership.
- F. The **Zoning Administrator** is authorized to prepare and furnish to the public, from time to time forms for application for a Zoning Compliance Permit.
- G. The **Zoning Administrator** is authorized to affix to the face of any Zoning Compliance Permit any condition authorized by the Ordinance or under any discretionary permit issued by any Board under this Ordinance, or under other Ordinances or promulgated policies of the **Township**, pertaining to the use, work or occupancy of the land and premises. Failure to comply with any condition shall render the Zoning Compliance Permit null and void.
- H. Boundary Surveys
1. In all **Zoning Districts**, when a setback variance has been granted by the **Zoning Board of Appeals**, any application must be supported by a boundary survey prepared by a registered land surveyor showing the lot lines. Location of proposed footings shall be added to a copy of the survey and submitted to the **Zoning Administrator**.
 2. Where a survey is required under this Section, the surveyor shall certify the boundary survey, showing that all new construction and **structures** are set as originally proposed in the application for a zoning permit, and the owner shall deliver said certified survey to the **Zoning Administrator** within ten (10) days after the footing or final location of the structure is set. Failure to comply with this section shall render the zoning permit null and void.

SECTION 23.07

ORDINANCE AMENDMENTS

- A. Amendments. The **Township Board** may, from time to time by Ordinance, amend, supplement or change the boundaries of districts, designation of districts, or regulations herein established, in accordance with the State law.
- B. Initiation of Amendments. Amendment to this Ordinance will be directed to the **Planning Commission** for review and may be initiated by the **Township Board** by resolution; by the **Planning Commission**, by motion; or by any interested person or persons by petition to the **Zoning Administrator**.
- C. Amendment Petition. All petitions for amendment to this Ordinance shall be in writing, signed and filed with the **Zoning Administrator** for presentation to the **Planning Commission**. A fee shall be paid in accordance with the schedule of fees established by the **Township Board**. Such petitions shall include the following:

1. The petitioner's name, address and interest in the petition, as well as the name, address, and interest of every person having a legal or equitable interest in any land which is to be rezoned;
 2. The nature and effect of the proposed amendment;
 3. If the proposed amendment would require a change in the Zoning Map:
 - a. A fully dimensioned map, drawn to a minimum scale of one inch to one hundred feet (1" = 100'), showing the land which would be affected by the proposed amendment;
 - b. A legal description of such land;
 - c. The present zoning district of the land;
 - d. The zoning district of all abutting lands, and
 - e. All public and private right-of-way easements bounding and intersecting the land to be rezoned.
 4. The alleged error in the Ordinance which would be corrected by the proposed amendment, with a detailed explanation of such alleged error and detailed reason why the proposed amendment will correct the same.
 5. The changed or changing conditions in the area or in the Township that make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.
 6. All other circumstances, factors, and reasons which the petitioner offers in support of the proposed amendment.
- D. Notice. The Planning Commission shall hold at least one (1) public hearing on all Zoning Ordinance amendments, supplements, changes to the boundaries of districts, designation of districts, or regulations. Notice of the public hearing shall be given as follows:
1. Notice of the public hearing for a text amendment or map amendment (rezoning) shall be published in a newspaper of general circulation in the Township not less than 15 days prior to the date of the hearing.
 2. For rezonings, the notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.
 3. The notice shall be given not less than 15 days before the date the application will be considered.
 4. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
 5. The notice shall:
 - a) Describe the nature of the request.
 - b) Indicate the property that is the subject of a rezoning request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 - c) State when and where the request will be considered.
 - d) Indicate when and where written comments will be received concerning the request.

6. If 11 or more adjacent properties are proposed for rezoning, is not required that the notice be provided to the recipients listed in subsection 2, and further, the notice need not contain the individual addresses of properties required to be listed under subsection 5b).
 7. Notice of the time and place of the public hearing shall also be given by mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Township Clerk for the purpose of receiving the notice of public hearing.
- E. Review Standards for Rezoning Requests:
1. Is the requested zoning consistent with the Niles Township Master Plan?
 2. Would the re-zoning be compatible with existing uses in the immediate area?
 3. Are there substantial reasons why the property cannot be reasonably used as currently zoned?
 4. Are adequate comparable sites available elsewhere properly zoned?
 5. Would the re-zoning constitute a spot zoning?
 6. Has there been a change of conditions in the area that would support the request?
 7. Would the change severely impact traffic, public facilities or the natural characteristics of the area?
 8. Are all uses permitted by the proposed district appropriate in this location?
- F. Procedure.
1. The **Planning Commission** shall recommend to the **Township Board** approval or denial of such amendment. The **Planning Commission** shall reduce its action to a written summary recommendation to the **Township Board**. This written summary recommendation shall:
 - a. Indicate the vote of each member upon this question;
 - b. Summarize the pertinent facts particular to the issue; and
 - c. List any recommended changes to the proposed change or amendment as presented.
 2. The recommendation of the **Planning Commission** shall be transmitted to the Berrien County Planning Commission, unless such review authority is specifically waived by the County, and to the **Township Board**.
 3. The **Township Board**, upon receipt of the **Planning Commission's** recommendation and that of the County Planning Commission (if applicable), shall act upon the proposed change or amendment by Ordinance. If a recommendation is not received from the County within thirty (30) days of its receiving the request, the Board shall presume the County does not have any comments. In any event, the County review is advisory only.
 4. The **Township Board** may hold additional hearings if it considers it necessary. Notice of such hearing shall be given in the same manner as required under section 23.07D for any other text amendment or rezoning. The **Township Board** shall grant a hearing on a proposed ordinance provision to a property owner who requests a hearing by certified mail, addressed to the **Township Clerk**.
 5. If the **Township Board** considers any amendments to the text forwarded by the **Planning Commission**, it may refer the proposed amendments back to the **Planning Commission** for a report thereon within a time specified by the **Township Board**.
 6. After the public hearing, if held as allowed under this section, the **Township Board** shall

consider and vote upon the adoption of the Ordinance, with or without amendments. A majority vote of the members of the **Township Board** shall be required to adopt any Ordinance or amendment.

7. Amendments shall be effective seven (7) days after publication, or at such later date after publication as may be specified by the **Township Board**.
 8. A notice of ordinance adoption shall be published in a newspaper of general circulation in the **Township** within fifteen (15) days after adoption, and shall be mailed to the airport manager of an airport entitled to notice under section 23.07 D7. Said notice shall include the following:
 1. In the case of a newly adopted zoning Ordinance, the following statement: “A zoning Ordinance regulating the development and use of land has been adopted by the Niles Township Board.”
 2. In the case of an amendment to an existing Zoning Ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.
 3. The effective date of the Ordinance.
 4. The place and time where a copy of the Ordinance may be purchased or inspected.
- G. Referendum Petition. Within seven (7) days after publication of the notice of adoption, a registered elector may file with the Township Clerk a notice of intent to file a petition for referendum.
1. If a notice of intent is filed, then within thirty (30) days following publication of the notice of adoption, a petition signed by a number of registered electors equal to not less than fifteen (15) percent of the total vote cast for all candidates for governor at the last preceding general election, may be filed with the Township Clerk requesting submission of the amendment to the electors for their approval.
 2. Upon the filing of a notice of intent, the ordinance or amendment adopted by the Township Board shall not take effect until one of the following occurs:
 - a. The expiration of thirty (30) days after publication of the Ordinance, if a petition is not filed within that time.
 - b. If a petition is filed within thirty (30) days after publication of the amendment and the Township Clerk determines that the petition is inadequate.
 - c. If a petition is filed within thirty (30) days after publication of the amendment and is determined by the Township Clerk to be adequate; an election is held; and the electors approve or reject the ordinance or amendment.

SECTION 23.08

RIGHTS AND REMEDIES

The rights and remedies provided herein are cumulative, and in addition to other remedies provided by law.

SECTION 23.09
SEVERABILITY

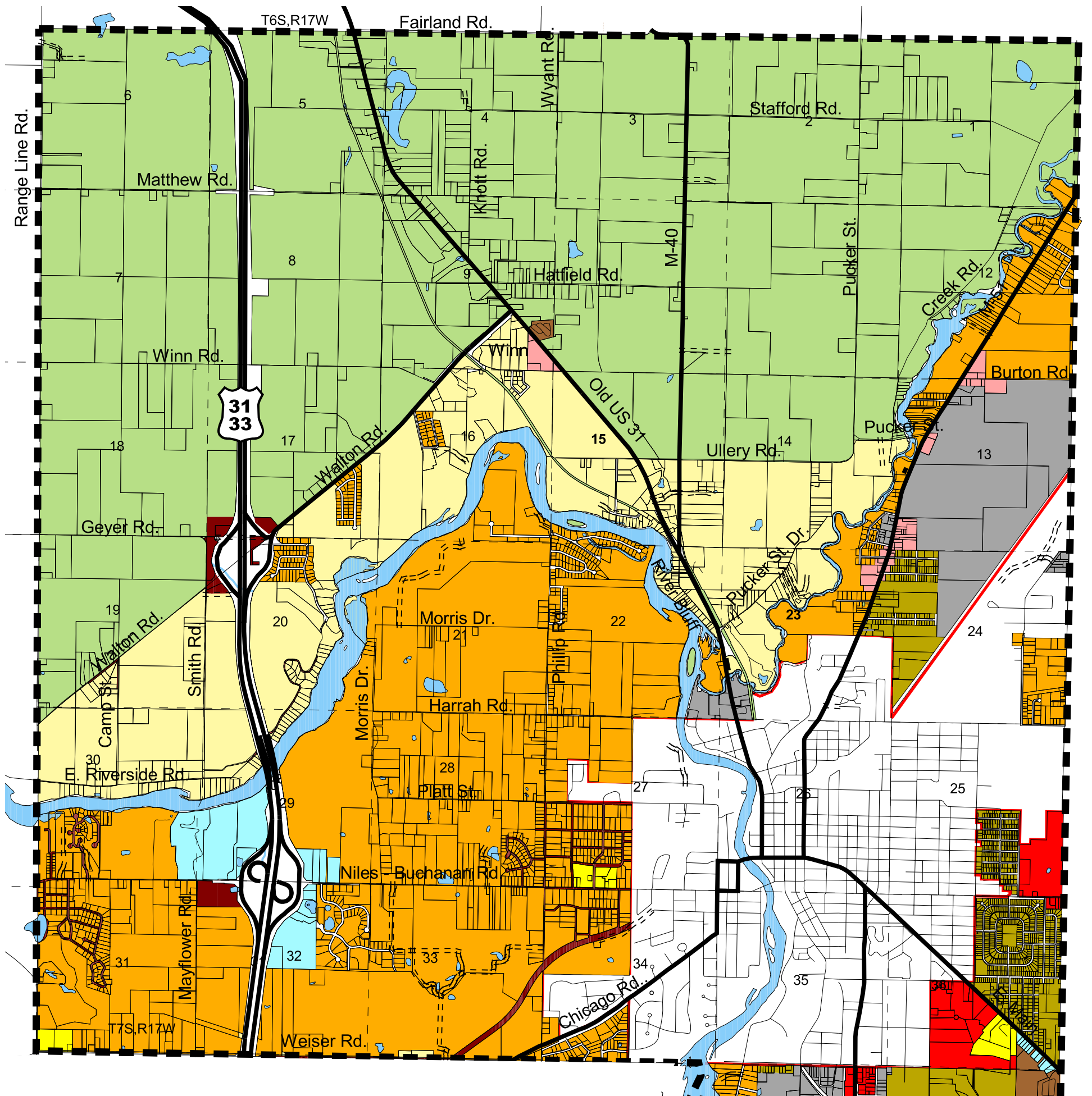
The Ordinance and various Chapters, sections, paragraphs, and clauses thereof, are hereby declared to be severable. If any Chapter, section, paragraph, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the Ordinance shall not be affected thereby.

SECTION 23.10
GENERAL RESPONSIBILITY

- A. The **Township Board** or its duly authorized representative is hereby charged with the duty of enforcing this Ordinance.
- B. Further, said **Township Board** is hereby empowered, in the name of Niles Charter Township, to commence and pursue any and all necessary and appropriate actions and proceedings in the Circuit Court of Berrien County, Michigan, or any other Court having jurisdiction, to restrain and prevent any non-compliance with, or violation of, any of the provisions of this Ordinance, and to correct, remedy and abate the non-compliance or violation.
- C. It is further provided that any person aggrieved or adversely affected by a non-compliance or violation may institute suit and join the **Township Board** in a suit to abate the same.

SECTION 23.11
ENACTMENT

The provisions of this Ordinance are hereby declared to be immediately necessary for the preservation of the public peace, health, safety, and welfare of the people and are hereby ordered to become effective seven (7) days following publication of a "Notice of Ordinance Adoption" in a newspaper circulating within Niles Charter Township. The effective date of this Zoning Ordinance is February 14, 2005.



Niles Township

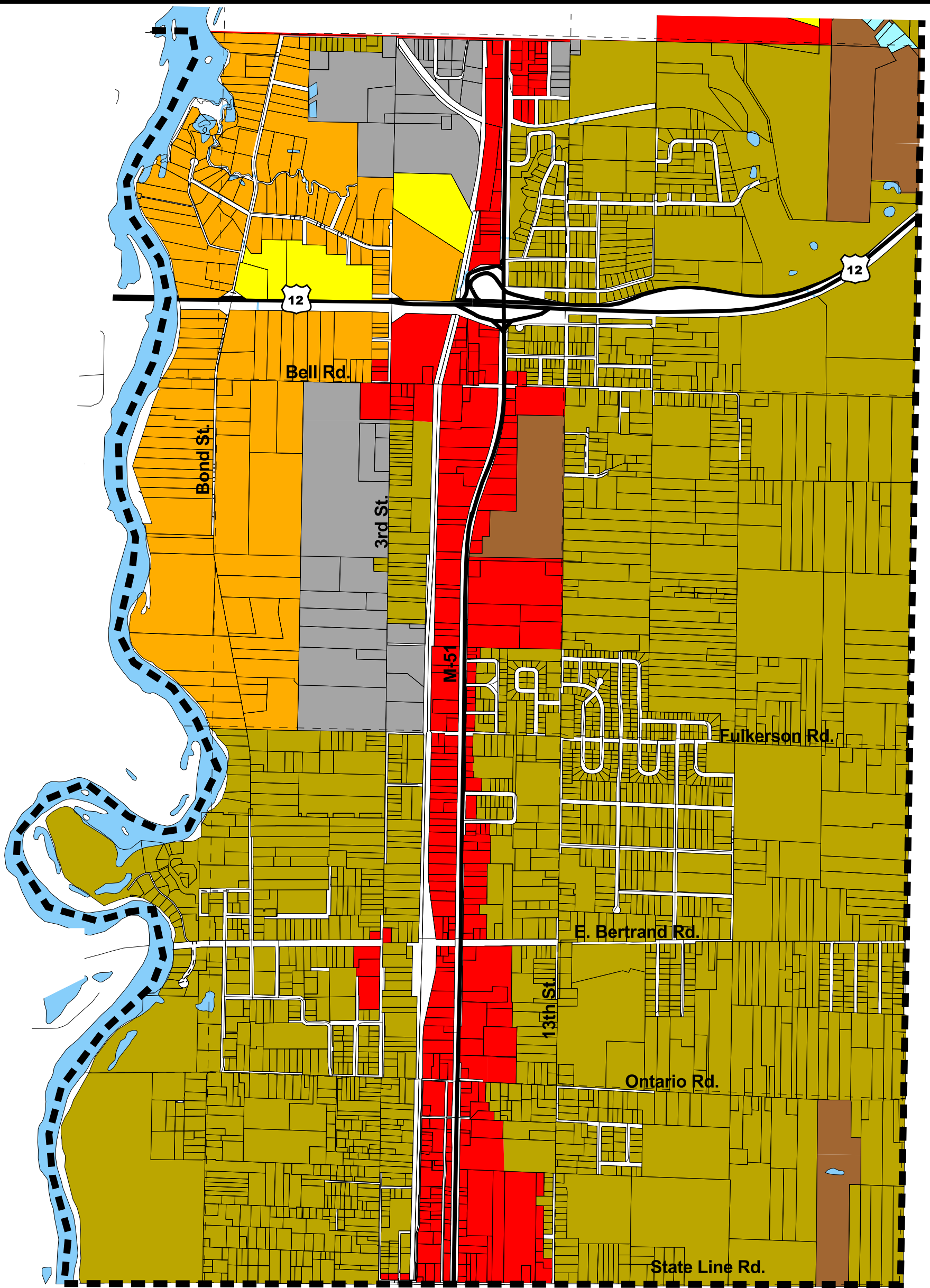
Berrien County, Michigan

Zoning Map

(Page 1)

AP	Agricultural Preserve
RP	Rural Preserve
R-1A	Low Density Residential
R-1B	Medium Density Residential
R-2	High Density Residential
R-3	Manufactured Housing Community
OS	Office Service
LB	Local Business
GB	General Business
HB	Highway Business
I	Industrial





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Niles Township Berrien County, Michigan Zoning Map (Page 2)

